

REAL ESTATE SALES CONTRACT
Clarksburg Town Center
(Phase 1-B Townhouse Lots)

THIS REAL ESTATE SALES CONTRACT (this "Contract") is made this 4th day of September, 2001, by and between TERRABROOK CLARKSBURG, L.L.C., a Delaware limited liability company ("Seller"), and MILLER AND SMITH LAND INC., a Virginia corporation, and its permitted assigns ("Purchaser").

RECITALS:

A. Seller is the owner of a tract of land, originally containing 263 acres, more or less, and known as "Clarksburg Town Center" (hereinafter referred to as the "Clarksburg Project"), located in Montgomery County, Maryland (the "County"). The Clarksburg Project is shown on the drawing attached to and made a part of this Contract as Exhibit "A".

B. The Clarksburg Project is the subject of Preliminary Plan No. 1-95042 (the "Preliminary Plan") approved by the Montgomery County Planning Board (the "Planning Board"). Pursuant to the Preliminary Plan, a comprehensive planned development has been approved for the Clarksburg Project consisting of residential, commercial office and retail uses.

C. Purchaser desires to buy from Seller, and Seller is willing to sell to Purchaser, a portion of the Clarksburg Project comprised of a total of forty-five (45) lots or proposed lots for the development of single family attached homes (i.e., townhouses), consisting of thirty (30) lots for market rate townhouses (collectively, "Market Rate Lots" and individually, a "Market Rate Lot"), and fifteen (15) lots for "MPDU" townhouses (collectively, "MPDU Lots" and individually, an "MPDU Lot"). "MPDUs" are dwelling units which must be sold or leased at prices or rental rates no greater than those established by the County for moderately priced housing, as set forth in Chapter 25A of the Montgomery County Code (and are referred to individually as an "MPDU"). The Market Rate Lots and the MPDU Lots are shown and/or described on Exhibit "B" attached to and made a part of this Contract and are sometimes referred to in this Contract collectively as "Lots" and individually as a "Lot". This sale also includes any and all improvements, appurtenances, rights, privileges and easements benefiting, belonging or pertaining to the Lots (the "Appurtenances"). The Lots and Appurtenances are collectively referred to in this Contract as the "Property".

NOW, THEREFORE, in consideration of the mutual covenants of Seller and Purchaser set forth below and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, Seller and Purchaser agree as follows:

1. AGREEMENT OF SALE AND PURCHASE

Seller agrees to sell and convey to Purchaser and Purchaser agrees to purchase and acquire from Seller, under the terms and conditions set forth in this Contract, the Property. Purchaser acknowledges that the boundary lines and area of the Lots, as shown on Exhibit "B", are approximate and are subject to adjustment pursuant to the final plats of subdivision to be recorded prior to settlement under this Contract and Purchaser agrees to accept the Lots as they may be so adjusted.

2. PURCHASE PRICE

The purchase price for each Lot contained within the Property shall be as follows (each, a "Per Lot Price"): [REDACTED] dollars ([REDACTED] per Market Rate Lot and [REDACTED] dollars (\$ [REDACTED] per MPDU Lot. The Per Lot Price for the Lots, however, shall be subject to increase in accordance with Paragraph 3 below.

3. PURCHASE PRICE ESCALATION

Commencing on the date of the first settlement under this Contract [but in no event later than the outside date for the first settlement as provided in Exhibit "E" hereto] (the "Trigger Date") and continuing through the date that all of the Market Rate Lots have been acquired by Purchaser under this Contract, the Per Lot Price for the Market Rate Lots shall increase at the rate of [REDACTED] per annum. The increase factor as to each Market Rate Lot acquired on or after the Trigger Date shall be computed on a per diem basis, based upon a three hundred sixty (360) day year applied to the actual number of days elapsed from (and including) the Trigger Date through (and including) the date of settlement on the Lot in question. Further, if, after the date of this Contract, the County increases the maximum sales prices or maximum rental rates which may be charged for the type of MPDUs to be constructed on the MPDU Lots ("MPDU Offering Rates"), the Per Lot Price for each MPDU Lot shall be increased by the same percentage as the increase to the MPDU Offering Rates.

4. DEPOSIT; PAYMENT OF PURCHASE PRICE

The purchase price for the Property shall be paid as follows:

(a) Within two (2) business days after the execution of this Contract by Seller and Purchaser, Purchaser shall deliver to HAUMAK TITLE (the "Escrow Agent"), by certified check or wire transfer the amount of [REDACTED] Dollars ([REDACTED] (the "Deposit"). The Escrow Agent shall immediately deposit such funds into a separate money market account in a federally insured bank. Accrued interest on such funds shall become part of the "Deposit" and shall be paid to whichever party becomes entitled to the Deposit pursuant to the terms of this Contract. Upon execution of this Contract, Seller, Purchaser and Escrow Agent shall enter into a Deposit Escrow Agreement governing Escrow Agent's duties under this Contract substantially in the form attached to and made a part of this Contract as Exhibit "D". Provided that Purchaser is not in default hereunder, the Escrow Agent shall refund the Deposit to Purchaser upon the later to occur of (i) final settlement under this Contract, or (ii) payment by Purchaser to Seller of the full amount of the Recreational Facilities Contribution [defined in Paragraph 8(a)(ix)] due under this Contract.

(b) At the time of each settlement under this Contract, Purchaser shall pay to Seller, in cash or by wire transfer, the applicable Per Lot Price for each Lot then being acquired (as such Per Lot Price is increased under Paragraph 3). If Seller performs all of its obligations in order to complete settlement and the Settlement Agent [defined in Paragraph 7(c)] fails to disburse settlement proceeds within two (2) days after the date required for settlement, Purchaser shall pay to Seller interest on the undisbursed amount at the rate of ten percent (10%) per annum based on a 360-day year, pro rated daily, from the second day after the date required for settlement until the date disbursement is made. Disbursement received after 12:00 noon on any business day or received at any time on any non-business day shall be deemed to have been received on the next succeeding business day. Purchaser shall pay any such interest to Seller within three (3) business days after settlement proceeds are disbursed. If Purchaser fails to pay such interest, Seller may draw upon the Damage Fund in accordance with Paragraph 8(g)(ii) to pay such interest as if the interest were Cure Costs incurred under Paragraph 8(g)(i).

5. TITLE

(a) At the time of each settlement under this Contract, Seller shall convey to Purchaser fee simple title to the Lots then being acquired. Such title shall be marketable, good of record, and insurable by a national title insurance company (the "Title Company"), subject, however, only to the "Permitted Exceptions". The Permitted Exceptions shall consist of: (i)

the lien of current general real estate taxes and other public charges which are not yet due and payable as of the date of settlement; (ii) zoning and applicable laws and regulations; (iii) any matters permitted under Paragraph 5(c)(i), the "Water and Sewer Declaration" [defined in Paragraph 8(h)], the "Association Declaration" [defined in Paragraph 8(j)], and any other matters affecting title which may be created after the date of this Contract and which are expressly provided for in this Contract; (iv) any matters which a current accurate survey or personal inspection of the Property would disclose and which exist as of the final day of the "Study Period" (defined in Paragraph 18); (v) any matters set forth on the "Plats" [defined in Paragraph 8(a)(ii)]; and (vi) any easements, covenants, restrictions, conditions, or other matters of title affecting the Property which are of record as of the date of this Contract.

(b) (i) During the Study Period provided for in Paragraph 18, Purchaser shall review and satisfy itself as to all title and survey matters affecting the Property. If any such matter is unsatisfactory to Purchaser, Purchaser's sole recourse shall be to terminate this Contract during the Study Period in accordance with Paragraph 18 and receive a refund of the Deposit, provided that Purchaser is not in default under this Contract. In no event shall Seller be obligated to cure any title or survey matter which is unsatisfactory to Purchaser or have any liability related to the same.

(ii) Notwithstanding the foregoing, no deeds of trust, mortgages, other loan security instruments or other financial encumbrances encumbering all or part of the Property ("Financing Liens") shall be deemed to be Permitted Exceptions, except for those to be adjusted between the parties in accordance with the express terms of this Contract ("Adjusted Items"). At or before the time of settlement on each Lot, Seller shall cause the Lot to be released from all Financing Liens created or permitted to be created by Seller, except for Adjusted Items. Seller may use proceeds from the purchase price to obtain such release.

(c) After the execution of this Contract, Seller may take any of the following actions without Purchaser's consent, as concerns Lots not yet acquired by Purchaser:

(i) Create, modify, or release easements, rights-of-way, covenants, conditions or restrictions which Seller determines are necessary or appropriate for development or use of the Property or other portions of the Clarksburg Project, provided that none of the same shall materially interfere with or materially increase the cost of constructing or occupying the single family homes which Purchaser intends to construct upon the Property.

(ii) Place new Financing Liens against Lots and modify existing Financing Liens, provided that all Financing Liens encumbering Lots may be released by payment to the lender(s) of an amount not exceeding the Per Lot Price for those Lots.

(d) At each settlement, Seller shall deliver to the Title Company: (i) the customary affidavit certifying that Seller is not a "foreign person" as defined by the Internal Revenue Code or applicable regulations and that no federal tax withholding is required, (ii) the customary affidavit required by the Title Company to eliminate from an owner's policy of title insurance the standard exceptions for unfilled mechanics' liens and parties in possession, such affidavit to be based upon Seller's actual knowledge and to reflect such other modifications as Seller may reasonably request, and (iii) such resolutions of Seller as may be reasonably required to evidence Seller's authority to consummate this transaction.

6. AUTHORITY

(a) Seller represents and warrants to Purchaser that each of the following is true and correct in all material respects as of the date of this Contract:

(i) Seller is the owner of fee simple title to the Property.

(ii) Seller has full power and authority to enter into and consummate the transaction described in this Contract.

(iii) Neither the entering into nor the consummation of the transaction described in this Contract will constitute or result in a violation or breach by Seller of any judgment, order, writ, injunction or decree issued against or imposed upon Seller or any agreement to which Seller is a party or by which it is bound.

(iv) The person executing this Contract on behalf of Seller has full authority to do so and to bind Seller in accordance with its terms, without obtaining any further approvals or consents.

(v) No attachments, executions, assignments for the benefit of creditors, or voluntary proceedings in bankruptcy or under other debtor relief laws are pending against Seller.

(vi) That to Seller's knowledge, and except as may be shown on the Phase I Environmental Site Assessment referenced on Exhibit "O" hereto: (A) the Property does not contain any hazardous substance; (B) Seller has not conducted or authorized the generation, transportation, storage, treatment or disposal at the Property of any hazardous substance other than is customary resulting from construction on surrounding properties; (C) Seller has not received any written notice from any governmental authority regarding the presence of any hazardous substances on the Property; and (D) Seller has not performed any "clean-up" of hazardous substances at the Property required by the "Environmental Laws" (hereinafter defined) which could give rise to liability on the part of Purchaser to reimburse any governmental authority for the costs of such clean-up or a lien or encumbrance on the Property. For purposes of this subparagraph, "hazardous substance" means any material defined as a hazardous substance under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq., or under any state "superfund" law currently in effect in the state of Maryland (collectively, the "Environmental Laws"). As used in this subparagraph, "Seller's knowledge" means the actual current knowledge of Tracy Graves, without investigation or inquiry.

(b) Purchaser represents and warrants to Seller that each of the following is true and correct in all material respects as of the date of this Contract:

(i) Purchaser has full power and authority to enter into and consummate the transaction described in this Contract.

(ii) Neither the entering into this Contract nor the consummation of the transaction contemplated herein will constitute or result in a violation or breach by Purchaser of any judgment, order, writ, injunction or decree issued against or imposed upon Purchaser or any agreement to which Purchaser is a party or by which it is bound.

(iii) The person executing this Contract on behalf of Purchaser has full authority to do so and to bind Purchaser in accordance with its terms, without obtaining any further approvals or consents.

(iv) No attachments, executions, assignments for the benefit of creditors, or voluntary proceedings in bankruptcy or under other debtor relief laws are pending against Purchaser.

(c) It shall be a condition precedent to each party's obligation to proceed to each settlement that the representations and warranties contained in Paragraphs 6(a) and 6(b) shall be true and correct in all material respects as of the date of that settlement.

7. SETTLEMENT

(a) (i) The number of settlements to occur under this Contract, the specific Lots to be acquired by Purchaser at each settlement, and the tipping for each settlement are as set forth on Exhibit "B" attached to and made a part of this Contract.

(ii) Purchaser may acquire more Lots at any settlement than the number of Lots required for that settlement, provided that the designation of additional Lots is approved by Seller and in all events Purchaser shall acquire no less than an entire contiguous stick of townhouse Lots. In the event that Purchaser acquires more Lots at any settlement than is required by this Contract, credit shall be given for the excess Lots against the settlement requirements for the next succeeding settlement(s).

(b) Under Paragraph 8(b), Seller is substantially to complete certain Development Work in pace with the settlements required under Exhibit "E". If Seller fails to do so, the settlement at hand (the "Pending Settlement") shall be postponed until fifteen (15) days after the Development Work in question has been substantially completed. In that event, (i) except during any Extension Period (defined below), the escalation factor provided for in Paragraph 3 shall abate from the first day after the date on which the Pending Settlement was originally required to be held until the day the Development Work for the Pending Settlement has been substantially completed, and (ii) all subsequent settlements shall be postponed for a period of time equal to the period of postponement of the Pending Settlement. If, however, any settlement is postponed and the Development Work necessary for that settlement has not been substantially completed within two hundred seventy (270) days after the date on which the Pending Settlement was originally to have taken place (the "Outside Date"), Purchaser shall have the election of (A) proceeding to the Pending Settlement within fifteen (15) days after the Outside Date, without any reduction of the purchase price for the Lots then being acquired and without any escrow of monies for incomplete work, (B) terminating this Contract, or (C) further extending the Outside Date for an additional period of ninety (90) days (the "Extension Period"). Purchaser shall give Seller written notice of its election of (A), (B), or (C) within three (3) days after the Outside Date. If Purchaser elects to extend the Outside Date for the Extension Period, the escalation factor provided for in Paragraph 3 shall abate during any portion of the Extension Period. If Purchaser elects to extend the Outside Date and the Development Work necessary for the Pending Settlement still has not been substantially completed by the expiration of the Extension Period, Purchaser shall have the election of (A) proceeding to the Pending Settlement within fifteen (15) days after the expiration of the Extension Period, without any reduction of the purchase price for the Lots then being acquired and without any escrow of monies for incomplete work, or (B) terminating this Contract. Purchaser shall give Seller written notice of its election of (A) or (B) within three (3) days after the expiration of the Extension Period. If Purchaser elects to proceed to the Pending Settlement pursuant to this subparagraph, Seller shall perform all outstanding items of the Development Work for the Lots being conveyed as soon after settlement as is reasonably practicable and Seller shall have a right of entry upon the Lots to carry out this work. If Purchaser elects to terminate this Contract pursuant to this subparagraph, the Deposit shall be returned to Purchaser (provided that no default exists by Purchaser under this Contract) and the parties shall be relieved of all liability to one another under this Contract. If Purchaser fails to timely exercise any election afforded to Purchaser under this subparagraph, Purchaser shall be conclusively deemed to have elected to proceed to the Pending Settlement. No acceleration by Purchaser of the time for settlement on any Lot shall serve to accelerate the time for performance of the Development Work. Seller may rely upon the settlement schedule set forth in Exhibit "E" in prosecuting the Development Work.

(c) Each settlement shall be conducted by the Escrow Agent as agent for the Title Company or such other settlement agent as determined by Purchaser and reasonably acceptable to Seller (the "Settlement Agent"). Settlement shall be held at 10:00 A.M. on the date of settlement in the offices of the Settlement Agent or at such other time and/or place as may be mutually agreed upon by Seller and Purchaser. The delivery to the Settlement Agent of the price for the portion of the Property then being acquired, all other sums due at settlement under this Contract, the deed, and such other papers and items as are required by either party under the terms of this Contract (where applicable, properly executed and acknowledged) shall be considered good and sufficient tender of performance.

(d) At each settlement, Seller shall execute and deliver a special warranty deed to Purchaser for the portion of the Property then being acquired, expressly subject, however, to the Permitted Exceptions.

(e) Each settlement shall be subject to the condition precedent that, at the time of settlement, no moratorium shall be in effect by any governmental authority or public utility

company which would prevent the issuance of building permits or make unavailable water, sewer, or other necessary utility service for all Lots then to be acquired (a "Moratorium"). If, at the time of any settlement, a Moratorium shall be in effect, such settlement shall be postponed until fifteen (15) days after the Moratorium has terminated. If the Moratorium has not terminated within twelve (12) months after the originally required date for that settlement, this Contract shall automatically terminate unless Purchaser elects, by written notice given to Seller within fifteen (15) days after the expiration of the twelve (12) month period, to waive this condition precedent. In the event of termination under this Paragraph 7(e), the Deposit shall be returned to Purchaser (provided that no default exists by Purchaser under this Contract) and the parties shall be relieved of all liability to one another under this Contract. If Purchaser waives this condition precedent, settlement on the portion of the Property in question shall be held within fifteen (15) days after the waiver. If any settlement is postponed because of a Moratorium, the escalation factor provided for in Paragraph 3 shall abate during the period of postponement and all subsequent settlements shall be postponed an equal period of time.

8. DEVELOPMENT MATTERS

(a) To the extent not already accomplished as of the date of this Contract, Seller, at its sole expense, shall perform the following work with respect to the Property (the "Development Work"):

(i) Obtain final approval by the Planning Board of a site plan providing for the development of single family attached townhouses upon the Property (the "Site Plan").

(ii) Obtain final approval by the County of final plats of subdivision for the Property (the "Plats") and record the Plats in the County land records, establishing each of the Lots as a legally subdivided lot.

(iii) Grade the Lots to a balanced lot condition in accordance with the grading elevations shown for the Lots on the grading plan which is attached to and made part of this Contract as Exhibit "F" (the "Grading Plan"). The grading work shall be further subject to Paragraph 8(c).

(iv) Construct the public and private streets in front of and adjacent to the Lots (the "Streets") so that vehicular access is provided between each of the Lots and a public thoroughfare open for travel. However, Purchaser, at its own expense, shall be responsible for constructing all on-Lot driveways (including pipe stems and private drives), and driveway aprons. Purchaser shall also be responsible for installing all sidewalks, grassy areas and leadwalks located in front of and adjacent to each row of contiguous townhouse Lots (a "Lot Block") and in the public or private right-of-way between the property line of the Lots and the curbline of the Streets. Such sidewalks, grassy areas and leadwalks shall be installed by Purchaser, at its own expense, within thirty (30) days after Purchaser substantially completes construction of the townhouse units to be located on that Lot Block, subject to reasonable extension for seasonal conditions. If Purchaser does not install any of these items within the time required, Seller shall have the right to install any of the unfinished items and if Seller does so, Purchaser, within thirty (30) days after written request by Seller, shall reimburse to Seller the direct and reasonable costs incurred by Seller to install these items (in which case Seller shall provide copies of paid invoices or other reasonable supporting evidence to Purchaser with respect to the costs incurred by Seller), plus fifteen percent (15%) for Seller's overhead in undertaking this work. If Purchaser fails to make full reimbursement to Seller as required under this Paragraph, then any outstanding sums shall be deemed Cure Costs under Paragraph 8(g)(i) and Seller may draw upon the Damage Fund in accordance with Paragraph 8(g)(ii) to pay those Cure Costs as if the Cure Costs had been incurred under Paragraph 8(g)(i). The Damage Fund shall be not deemed to be a limitation upon Purchaser's liability for failure to install the above items or pay any Cure Costs due to Seller. Purchaser shall also be responsible for installing, at its own expense, all on-Lot sidewalks and leadwalks. Seller, at its own expense, shall install all sidewalks, grassy areas and leadwalks in the public or private right-of-way between the property line of common area parcels and the curbline of the Streets.

(v) Construct the private alleyways in the rear of the Lots (the "Alleyways"). Purchaser, at its own expense, shall construct all on-Lot driveways and the tie-ins where the on-Lot driveways meet the Alleyways. The Streets and Alleyways are sometimes collectively referred to in this Contract as the "Roads".

(vi) Install or cause to be installed public water and public sanitary sewer lines in the rights-of-way of the Roads and stubbed to the property line of the Lots, provided that Purchaser shall be responsible for the installation of water and sewer lines within the Lots.

(vii) Grant the necessary easements and install the necessary conduits to allow the extension of gas, electric, and cable TV service to the Lots, provided that Purchaser shall be responsible for the installation of all such utility lines within the Lots. Purchaser acknowledges that Seller may be required to install temporary utility facilities to service some or all of the Lots (including, without limitation, external propane tanks) as reasonably required in connection with Seller's development plans.

(viii) Construct the storm drainage system and stormwater detention facility or facilities which will handle the stormwater runoff from the Property (the "Stormwater Facility"). At Seller's discretion, the Stormwater Facility may serve as a sediment control pond during construction on the Clarksburg Project and be converted by Seller to a permanent stormwater management facility at a later time.

(ix) Construct the community recreational facilities required by the Site Plan (the "Community Recreational Facilities"). Purchaser shall pay to Seller the sum of [REDACTED] Dollars (\$ [REDACTED]) per Lot for each Lot acquired by Purchaser under this Contract as Purchaser's contribution towards the cost of the Community Recreational Facilities (the "Recreational Facilities Contribution"). The Recreational Facilities Contribution shall be paid in full by Purchaser to Seller no later than ninety (90) days after the date of the final settlement under this Contract. If Purchaser fails to pay the Recreational Facilities Contribution by such date, then Seller may draw upon the Deposit to pay the Recreational Facilities Contribution and Purchaser shall promptly pay to Seller any shortfall between the amount of the Deposit and the amount of the Recreational Facilities Contribution.

(x) Perform those other items of work which are designated as Seller's responsibility on the Schedule of Development Responsibilities attached to and made a part of this Contract as Exhibit "G".

(b) (i) The Development Work may be staged over time by Seller and Seller shall diligently pursue substantial completion of the Development Work as to each group of Lots so as to coincide with or precede the pace and order of settlements as set forth in Exhibit "E". For the purposes of this Contract, Streets shall be deemed to have been substantially completed when the base paving and curb and gutter have been installed on the Streets in front of and providing access to the group of Lots then to be acquired. Further, the Development Work as to each group of Lots shall be deemed to have been substantially completed even though the following items of the Development Work have not yet been constructed, installed, or performed (collectively, the "Post-Settlement Items"): the Alleyways, the Stormwater Facility; the Community Recreational Facilities; common area landscaping and other improvements to common areas; top paving and remaining improvements to the Streets (other than base paving, curb, and gutter); items of a seasonal or cosmetic nature; and any other Development Work not required for the issuance of building permits for the construction of houses upon the Lots then being acquired. Settlements shall proceed in accordance with Exhibit "E" even though the Post Settlement Items have not yet been installed, constructed, or performed.

(ii) The Post-Settlement Items shall be completed as follows. With respect to the Alleyways, Seller and Purchaser shall coordinate their activities so that the Alleyways behind each Lot Block shall be base paved by Seller no later than thirty (30) days before the date of the first closing on the sale of a house constructed on that Lot Block. Purchaser shall give Seller at least sixty (60) days' prior written notice of the date of such closing. All other Post-Settlement Items shall be installed, constructed, or performed by Seller at such time during Seller's development of the Clarksburg Project as Seller may determine or the

County may require. If, however, (A) any Post-Settlement Items must be installed, constructed, or performed in order for Purchaser to obtain an occupancy permit or any other permit or governmental approval for any house constructed by Purchaser, or (B) Seller fails to base pave any Alleyway by the time required under this Paragraph 8(b)(ii), Purchaser shall give Seller written notice so advising and Seller shall install, construct, or perform such Post-Settlement Item within thirty (30) days after receiving the notice. If Seller fails to do so, Purchaser may give written notice to Seller of Purchaser's intention to take over and perform such Post-Settlement Item itself. If Seller fails to commence such Post-Settlement Item within seven (7) days after receipt of such notice, or if, following such commencement, Seller fails diligently to prosecute the work, Purchaser may perform that Post-Settlement Item. If Purchaser is entitled to perform and does perform any Post-Settlement Item pursuant to this subparagraph, Seller shall reimburse to Purchaser the direct and reasonable out of pocket costs incurred by Purchaser to perform the work, plus fifteen (15%) percent as an administrative and overhead fee. The reimbursement shall be due within thirty (30) days after written request by Purchaser, accompanied by written evidence of the costs. If there is any disagreement between the parties as to the period that is commercially reasonable to complete any such Post-Settlement Item, the matter shall be resolved by the "Arbitration Engineer" provided for in Paragraph 8(d). In no event, however, shall Seller be required to complete any Post-Settlement Item in less than five (5) business days after receipt of Purchaser's notice advising of the item.

(c) In performing its grading work, Seller shall place compacted fill within the building pad on each Lot to the basement slab grade as shown for that Lot on the Grading Plan, except that Seller shall place compacted fill to within one foot (1'), plus or minus, of the garage slab elevations, as shown on the Grading Plan. Such compacted fill shall extend ten (10) feet beyond the building pad. Seller shall place non-structural fill on top of the compacted fill, as necessary, so that each Lot Block being acquired at any particular settlement balances as a whole. A Lot Block shall be deemed to balance if no more 100 cubic yards of dirt within the Lot Block remains to be removed and/or imported in connection with the construction of Purchaser's houses upon those Lots (assuming that such houses are constructed at the grades shown in the Grading Plan). Any excess dirt required to be removed from or imported to a Lot Block in connection with the construction of Purchaser's houses (up to the limit set forth above) shall be removed and hauled away from or imported to the Lot Block (as the case may be) by Purchaser, at its sole expense. Seller shall designate a site within the Clarksburg Project where Purchaser may deposit or obtain the excess dirt. At or before the time of each inspection called for by Paragraph 8(d), Seller shall furnish to Purchaser certifications by a licensed geotechnical engineer that the compacted fill placed on the Lots then being acquired was compacted in accordance with customary industry standards. The certifications shall run to the benefit of both Seller and Purchaser. Seller shall be responsible for all sediment control measures necessitated by Seller's grading work, but Purchaser shall be responsible for all sediment control measures necessitated by Purchaser's construction of houses, including, without limitation, the proper maintenance of any sediment control devices located outside of the Property which serve a Lot or Lots, as such devices are identified by Seller to Purchaser at the Lot inspection pursuant to Paragraph 8(d) or from time to time thereafter ("Off-Lot Sediment Control Devices"). To the extent that any Off-Lot Sediment Control Devices service some or all of the Property as well as other portions of the Clarksburg Project which are not part of the Property, Seller shall reasonably apportion the maintenance responsibilities and/or maintenance costs for such shared Off-Lot Sediment Control Devices among the owners of the property served by such Off-Lot Sediment Control Devices. Purchaser shall have a right of entry upon such other portions of the Clarksburg Project in connection with any of its maintenance responsibilities for Off-Lot Sediment Control Devices subject to the provisions of Paragraph 18(d) of this Contract, and Purchaser shall coordinate its activities on such other portions of the Clarksburg Project with Seller prior to Purchaser's entry thereon. Purchaser shall promptly perform its proportionate share of maintenance responsibilities with respect to, and/or pay a pro-rata share of the maintenance costs of, such shared Off-Lot Sediment Control Devices and Seller may draw upon the Damage Fund if Purchaser is in breach of the foregoing. The Damage Fund shall be not deemed to be a limitation upon Purchaser's liability for such breach. Purchaser, at its own cost, shall post the bonds required by the County in connection with Purchaser's sediment control responsibilities and, upon settlement on each group of Lots, shall cooperate with Seller to obtain release at the earliest possible time of Seller's grading and sediment control bonds relating to such Lots.

(d) Prior to settlement on any group of Lots, Seller and Purchaser shall jointly inspect the Development Work which is required to be substantially completed for settlement on such Lots. As a result of their inspection, the parties shall jointly prepare a "Lot Inspection Report", in substantially the form attached to this Contract as Exhibit "H", setting forth all items of the Development Work so inspected which require correction or completion. Among other things, the Lot Inspection Report shall include all damage noted to the curb and gutter of Roads adjoining the Lots and any other off-Lot improvements installed by Seller adjoining the Lots then to be acquired. Seller shall perform the Lot Inspection Report items within a reasonable time after the inspection, subject to extension for Force Majeure as defined in Paragraph 9(e). No settlement shall be delayed by the fact that Lot Inspection Report items remain to be performed unless the outstanding items affect Purchaser's ability to obtain building permits for the Lots then to be acquired. If the parties are unable to agree whether any item should be placed on the Lot Inspection Report, the parties together shall select a disinterested professional engineer licensed in the State of Maryland to resolve the issue (the "Arbitration Engineer"). The Arbitration Engineer shall have at least ten (10) years experience in land development matters. If the parties are unable to agree upon the selection of the Arbitration Engineer, then, upon the application of either party, the Arbitration Engineer shall be appointed by the President of the Maryland Chapter of the American Society of Civil Engineers. The decision of the Arbitration Engineer shall be binding upon the parties. The parties shall equally pay the fees of the Arbitration Engineer. Upon the joint inspection of the Development Work required for settlement on each group of Lots, Purchaser shall be deemed to have accepted such Development Work (including, without limitation, the grading, filling, and compaction work performed on those Lots) and Seller shall have no further obligation or liability to Purchaser with respect to such Development Work, except for (i) the items specifically set forth on the Lot Inspection Report, (ii) the items to be performed after settlement in accordance with Paragraph 8(b), and (iii) latent defects not reasonably discoverable during the inspection. However, Seller shall have no obligation or liability to Purchaser for latent defects in any filling or compaction work, provided that the work is the subject of a geotechnical certification furnished to Purchaser under Paragraph 8(c). In the event of such a latent defect, Purchaser shall look solely to the geotechnical engineer furnishing the erroneous certification. If any Alleyway is not base paved prior to settlement as contemplated in Paragraph 8(b)(ii), then the inspection of such work shall take place within seven (7) days after Seller gives Purchaser written notice of the substantial completion of the work and the terms of this Paragraph 8(d) shall apply to such work when inspected.

(e) With respect to any Lot purchased under this Contract, Purchaser, at its sole cost, shall perform all items of work which are designated as Purchaser's responsibility on the Schedule of Development Responsibilities attached as Exhibit "G".

(f) Purchaser shall be responsible for any damage to the Roads and any other off-Lot improvements constructed by Seller which is caused by Purchaser or its agents, employees, contractors, subcontractors, suppliers or invitees (collectively, "Purchaser's Agents"). From time to time, within three (3) business days after written request by Seller, the parties shall jointly re-inspect the Roads and other off-Lot improvements adjoining Lots upon which houses are under construction or upon which houses have been completed within the past sixty (60) days. For those Lots upon which a house has been completed, the parties shall complete a "Lot Completion Report" in the form attached to this Contract as Exhibit "I". Any damage to improvements or landscaping installed by Seller in the public right-of-way between the property line of the Lots and the bed of the Roads which is noted during the re-inspection shall be deemed to have been caused by Purchaser or its Agents and shall be Purchaser's responsibility under this Paragraph 8(f), unless (i) the same damage was noted on the Lot Inspection Report prepared as a result of the original inspection of these improvements, or (ii) Purchaser shows with reasonable certainty that a party other than Purchaser or its Agents caused the damage. If Seller elects to install street lights or street trees prior to the completion of Purchaser's house construction, Purchaser shall take special precaution to avoid damage to these items. Purchaser shall not park or store any equipment, building materials, construction vehicles, trailers or the like upon the Roads, the Lots not yet acquired by Purchaser, or other portions of the Clarksburg Project, except as permitted under Paragraph 8(f), and shall not travel upon the Roads with other than rubber-tired vehicles. Purchaser shall comply with all legal requirements related to its construction of houses upon the Lots, including, without limitation, the sediment control requirements of the County and "special protection area" measures imposed by the

County, shall maintain its construction site in an orderly, neat, and safe condition, and shall keep the Roads free from mud, dirt, and silt generated by its construction activities. Purchaser shall use commercially reasonable efforts to comply with the Build America Beautiful Guidelines attached to and made a part of this Contract as Exhibit "R". All construction waste resulting from Purchaser's activities shall be promptly disposed of by Purchaser at a site not located within or adjoining the Clarksburg Project. Purchaser shall cause Purchaser's Agents to comply with the restrictions binding upon Purchaser under this Paragraph 8(f). Upon acquiring each Lot and until conveying such Lot and the house constructed thereon to a third party home buyer (a "Home Buyer"), Purchaser shall be responsible for any damage or destruction to any trees located on the Lot caused by Purchaser or Purchaser's Agents.

(g) (i) If any damage occurs which is Purchaser's responsibility under Paragraph 8(f) or if Purchaser otherwise defaults under Paragraph 8(f), then, provided that Purchaser fails to repair the damage or cure the default to Seller's reasonable satisfaction within three (3) days after notice by Seller, Seller shall have the right (but not the obligation) to repair the damage or cure the default, as the case may be. However, in the case of a bona fide emergency, unsafe condition, or citation by any governmental authority requiring more prompt action, Seller may exercise its right of self-help without giving the three (3) day notice to Purchaser but with such prior notice as may be practicable under the circumstances. If Seller repairs the damage or cures the default, Purchaser shall pay to Seller the direct and reasonable out-of-pocket costs incurred by Seller to effect the repair or cure, plus fifteen (15%) percent as an administrative and overhead fee (the "Cure Costs"). Such payment shall be due within fifteen (15) days after written demand by Seller, accompanied by reasonable documentation supporting the Cure Costs.

(ii) To secure Purchaser's obligations under this Paragraph 8(g), Purchaser, at the time of each settlement, shall place in escrow with the Settlement Agent the sum of [REDACTED] Dollars ([REDACTED] in cash per Lot then being acquired as a fund against which Seller may draw for the payment of Cure Costs (the "Damage Fund"). The Damage Fund shall be in addition to the price for the Lots and any other sums which Purchaser is obligated to deliver at settlement. The Settlement Agent shall place the Damage Fund in an interest bearing federally insured bank account and accrued interest on such sum shall become part of the Damage Fund. If Purchaser fails to pay any Cure Costs to Seller when required under this Paragraph 8(g), the Settlement Agent, within five (5) days after Seller's written request, shall disburse the Cure Costs to Seller from the Damage Fund, to the extent such funds are available. Seller shall simultaneously provide a copy of the request to Purchaser. Within seven (7) days after any such disbursement from the Damage Fund, Purchaser shall replenish the Damage Fund so that it is restored to the full amount which existed immediately prior to the disbursement. Purchaser's failure to replenish the Damage Fund shall be a default under this Contract. Within sixty (60) days after Purchaser's completion of all construction on the Lots and provided that Seller has no unsatisfied claims for the payment of Cure Costs, the Settlement Agent shall return the balance of the Damage Fund, if any, to Purchaser. The Damage Fund shall be not deemed to be a limitation upon Purchaser's liability for damage to the Roads or other off-Lot improvements, for sediment control violations, for damage to or destruction of trees, or for any default by Purchaser in its obligations under Paragraph 8(f). The Damage Fund shall also secure Purchaser's obligations under Paragraphs 4(b), 8(a)(iv), 8(c), 8(n)(ii), 8(p), and 34 and the terms of this Paragraph 8(g)(ii) shall apply equally to draws upon the Damage Fund made by Seller pursuant to those provisions.

(h) (i) The Property is, or prior to the first settlement will be, subject to charges secured by a lien against the Property which are intended to cover or defray the cost of the construction and installation of all or part of the public water and sewer systems constructed within the Clarksburg Project (the "Water and Sewer Charges"). The Water and Sewer Charges are or will be imposed pursuant to a Declaration of Water and Sewer Charges recorded among the Land Records of the County (the "Water and Sewer Declaration") and shall be payable by Purchaser and all Home Buyers to a private utility company or other assignee of Seller (the "Utility Company"). Each Lot shall be subjected to the Water and Sewer Declaration at or before the time of settlement on that Lot. A draft Water and Sewer Declaration is attached to and made part of this Contract as Exhibit "J-1". Purchaser acknowledges that such Water and Sewer Declaration is subject to revision and, if so, the Property shall be subject to the

Water and Sewer Declaration as so revised, provided such revision does not increase the Water and Sewer Charges payable by Purchaser. Purchaser agrees to (A) incorporate into all of its contracts with Home Buyers a notice of the Water and Sewer Charges in substantially the form attached to and made a part of this Contract as Exhibit "J-2" (the "Water and Sewer Charges Notice"); (B) provide each Home Buyer with a copy of the Water and Sewer Declaration, and (C) incorporate into all deeds conveying Lots to Home Buyers a provision stating that such conveyance is subject to the Water and Sewer Declaration, including the applicable recording references for the Water and Sewer Declaration recorded against the Lot being conveyed. Purchaser acknowledges its receipt of the Water and Sewer Charges Notice in connection with its purchase of the Lots under this Contract. Purchaser shall provide its Home Buyers with any amended Water and Sewer Charges Notice and/or Water and Sewer Declaration which may from time to time be provided to Purchaser by Seller. Purchaser shall provide to Seller and/or the Utility Company, promptly upon request from either party, copies of deeds and settlement statements between Purchaser and Home Buyers and copies of use and occupancy permits for houses constructed on the Lots.

(ii) Purchaser shall pay to Seller at the time of each settlement under this Contract, a user connection fee for water and sewer facilities in the amount of [REDACTED] Dollars (\$[REDACTED] per Lot (the "Connection Fee") for each Lot acquired by Purchaser. The Connection Fee is separate from the Water and Sewer Charges.

(iii) To expedite the extension of sewer and/or water service to the Property or other portions of the Clarksburg Project, Seller may construct certain sewer and/or water improvements that would otherwise be constructed by the County or by the Washington Suburban Sanitary Commission (the "WSSC"). If Seller constructs such improvements, Seller may receive credits that can be surrendered to the WSSC in payment of the Systems Development Charges ("SDC") which will be due to the WSSC in connection with the construction of Purchaser's houses on the Property ("SDC Credits"). In all events, Purchaser, at its own cost, shall be responsible for paying the SDC due in connection with the construction of such houses. If Seller receives SDC Credits and if Seller so chooses in its sole discretion, Seller may assign to Purchaser, at or after any settlement, SDC Credits in an amount not to exceed the amount of the SDC that will be required to be paid to the WSSC for the Lots then being acquired by Purchaser and Purchaser shall simultaneously pay to Seller, in cash, an amount equal to the amount of the SDC Credits being assigned. If SDC Credits have not been previously assigned to Purchaser for any particular Lot, Purchaser shall notify Seller when Purchaser is ready to pay the SDC for that Lot and shall refrain from paying the SDC for a period of seven (7) days after giving the notice to allow Seller a final opportunity to assign to Purchaser SDC Credits with respect to such Lot. If Seller makes any assignment of SDC Credits under this Paragraph, Seller shall furnish to Purchaser reasonable documentation evidencing Seller's ownership of and right to assign the SDC Credits and the WSSC's willingness to accept the SDC Credits in payment of the SDC.

(i) Purchaser acknowledges that the Property is proposed to be included within the Clarksburg Town Center Development District (the "Tax District"), a special taxing district which may be created by the County. Purchaser further acknowledges receipt of notice of the Tax District in the form attached to and made a part of this Contract as Exhibit "K" (the "Tax District Notice"). If the Tax District is established, Purchaser and each subsequent owner of a Lot will be liable to pay annually any special assessment and/or special tax imposed under Chapter 14 of the Montgomery County Code (the "Tax District Assessment"). Purchaser agrees to incorporate into all of its contracts with Home Buyers or any other purchasers of Lots the Tax District Notice in substantially the form as set forth in Exhibit "K". Purchaser acknowledges that the amounts of the Tax District Assessment set forth in the Tax District Notice are estimates only and subject to change from time to time. Purchaser shall provide its Home Buyers or any other purchasers of Lots with any amended Tax District Notice which may from time to time be provided to Purchaser by Seller.

(j) (i) Seller has created or will create a homeowners association (the "Association") for the purpose of facilitating the orderly and cohesive development and use of the residential communities of the Clarksburg Project. Among other things, the Association will administer certain covenants and will own, operate and maintain certain common areas and

common facilities located within the Clarksburg Project. Seller has recorded or will record a declaration of covenants with respect to the Association among the land records of Montgomery County, Maryland (the "Association Declaration"). Each Lot shall be subjected to the Association Declaration at or before the time of settlement under this Contract on such Lot. The Association Declaration shall obligate homeowners within the Property to pay assessments for the expenses of the Association and other purposes identified in the Association Declaration ("Association Assessments"). As a "Participating Builder", Purchaser shall pay an Association assessment of [REDACTED] Dollars ([REDACTED] per Lot (the "Association Contribution"). The Association Contribution as to each Lot shall be paid by Purchaser at the time of settlement under this Contract. In addition to the Association Contribution, Purchaser may become obligated to pay the full assessments levied by the Association for a Lot under certain circumstances as are set forth in Section 5.7 the Association Declaration. Prior to the date of this Contract, Seller furnished to Purchaser draft copies of the Association Declaration and other governing documents for the Association (collectively, the "Association Documents"). Purchaser has had the opportunity to review and to satisfy itself as to the Association Documents. Purchaser is aware that the Association Documents are subject to review and approval by the County. Seller may make and Purchaser shall be bound by such changes, additions and deletions to the Association Documents as Seller may deem necessary or appropriate, provided that the changes, additions or deletions do not materially and adversely affect development of the Property in accordance with the Site Plan. In the event that Seller desires to make any changes, additions or deletions to the Association Declaration after any settlement, Purchaser shall promptly execute such consents as Seller may reasonably require to subordinate the Lots acquired by Purchaser to the operation and effect of the Association Declaration as amended. In accordance with Section 11B-107 of the Real Property Article of the Annotated Code of Maryland, as amended, Purchaser acknowledges receipt of the following notice:

NOTICE

THE SELLER IS REQUIRED BY LAW TO FURNISH YOU AT OR BEFORE THE TIME THE CONTRACT IS ENTERED INTO, OR WITHIN SEVEN (7) CALENDAR DAYS OF ENTERING INTO THE CONTRACT, ALL OF THE INFORMATION LISTED IN SECTION 11B-107(b) OF THE MARYLAND HOMEOWNERS ASSOCIATION ACT. THE INFORMATION IS AS FOLLOWS:

(1) THE NAME, PRINCIPAL ADDRESS, AND TELEPHONE NUMBER OF THE VENDOR AND OF THE DECLARANT, IF THE DECLARANT IS NOT THE VENDOR;

(2) A DESCRIPTION OF:

- THE LOCATION AND SIZE OF THE DEVELOPMENT, INCLUDING THE MINIMUM AND MAXIMUM NUMBER OF LOTS CURRENTLY PLANNED OR PERMITTED, IF APPLICABLE, WHICH MAY BE CONTAINED WITHIN THE DEVELOPMENT; AND

- ANY PROPERTY OWNED BY THE DECLARANT OR THE VENDOR CONTIGUOUS TO THE DEVELOPMENT WHICH IS TO BE DEDICATED TO PUBLIC USE; AND

- A COPY OF THE BYLAWS AND RULES OF THE PRIMARY DEVELOPMENT, AND OF OTHER RELATED DEVELOPMENTS, TO THE EXTENT AVAILABLE, TO WHICH THE PURCHASER SHALL BECOME OBLIGATED ON BECOMING AN OWNER OF THE PROPERTY, INCLUDING A STATEMENT THAT THESE OBLIGATIONS ARE ENFORCEABLE AGAINST AN OWNER AND THE OWNER'S TENANTS, IF APPLICABLE.

(ii) Seller will provide to Purchaser a document containing disclosures about the Association that Purchaser is required to give to Home Buyers in accordance with Section 11B-105 of the Maryland Homeowners Association Act (the "Association Disclosure

Statement"). At or before the time that Purchaser enters into a contract with a Home Buyer for the sale of a Lot, Purchaser shall provide the Home Buyer with the Association Disclosure Statement and shall obtain from the Home Buyer a written acknowledgement that the Association Disclosure Statement was received. Purchaser shall provide Seller with a copy of such written acknowledgment.

(k) Purchaser covenants as follows: (i) upon commencing construction of any building, Purchaser shall diligently and continuously prosecute the construction to completion; and (ii) the development of the Property shall be in accordance with the Site Plan, including, without limitation, any on-Lot landscaping plans made a part of the Site Plan.

(l) At all times, any model home constructed upon a Lot (including landscaping) shall be maintained by Purchaser in first-class condition and repair.

(m) At or before the date of this Contract, Seller has furnished to Purchaser a copy of the guidelines which shall govern the exterior appearance of the improvements to be constructed within the Clarksburg Project (the "Design Guidelines"). The Design Guidelines are further identified on Exhibit "L" attached to and made a part of this Contract. After the date of this Contract, Seller shall have the right to change the Design Guidelines and Purchaser shall be bound by the change. However, unless otherwise required by the County, no change in the Design Guidelines shall be binding upon Purchaser as concerns house designs approved in accordance with Paragraph 8(n) before the change is effected. Approvals of Purchaser's house designs and any other designs for the initial construction of improvements upon the Lots that are duly given in accordance with Paragraph 8(n), shall be binding upon Seller, any successor person or entity responsible for design review in the Clarksburg Project, and their respective representatives. Purchaser may not be required to amend or modify any such approved designs that would result in a material increase to Purchaser's costs of construction on the Lots.

(n) (i) The architecture, design and exterior features of the improvements that Purchaser intends to construct or install upon the Property require the approval of Seller. Before commencing the construction or installation of any buildings, structures or other improvements upon the Property, Purchaser shall submit to Seller, and obtain Seller's written approval of, plans and specifications showing in reasonable detail the architecture, design, and exterior features of such proposed improvements including, without limitation, site, grading, and landscaping plans (such plans and specifications being referred to as "Plans"). Any Plans which require governmental approval shall be submitted to Seller for review and approval prior to their submission to the applicable governmental authority whose approval is required. All Plans submitted to Seller shall comply with the Preliminary Plan, the Site Plan, the Design Guidelines, the Association Documents, all applicable governmental requirements, and all matters of record affecting the Property (collectively, the "Governing Standards"). Following this submission, Purchaser shall furnish to Seller such additional materials and information about the exterior of Purchaser's proposed improvements as Seller may reasonably request. The additional materials and information shall be furnished within seven (7) days after Seller's request. Seller shall grant or deny its approval of the Plans, in its sole and absolute discretion, by written notice to Purchaser given within thirty (30) days after the date on which Seller receives a complete set of the Plans. If Seller denies approval, Purchaser shall make appropriate revisions to the Plans in order that Seller's objections can be satisfied. If Seller fails to approve or object to the Plans in writing within thirty (30) days after receiving a complete set of the Plans from Purchaser, Seller shall be deemed to have approved the Plans, provided that, when submitting the Plans to Seller, Purchaser gives Seller a written notice expressly stating in capital letters as follows: **"THE ENCLOSED PLANS ARE BEING SUBMITTED TO YOU FOR YOUR APPROVAL IN ACCORDANCE WITH PARAGRAPH 8(n) OF THE REAL ESTATE SALES CONTRACT BETWEEN US DATED [INSERT DATE OF THIS CONTRACT]. IF YOU FAIL TO APPROVE OR OBJECT TO THESE PLANS IN WRITING WITHIN THIRTY (30) DAYS FROM YOUR RECEIPT OF THESE PLANS, YOU WILL BE DEEMED TO HAVE APPROVED THE PLANS."** The Plans as approved by Seller shall not be materially modified without Seller's prior written approval, such approval not to be unreasonably withheld or delayed. Seller is reviewing the Plans solely for its own purposes and Seller's approval of any Plans shall not be construed as a representation or warranty by Seller of the structural or functional adequacy of the matters detailed in the Plans, the fitness of the improvements for their intended purposes, the conformity of the improvements with

applicable zoning or building codes, restrictions of record, or other legal requirements or as to any other matter whatsoever. Seller, at its sole discretion, may assign its design review and approval rights hereunder to a design review committee, community architect, or similar entity as may be established for the Association and/or the Clarksburg Project.

(ii) All improvements constructed or installed on the Property by Purchaser shall be in accordance with the Governing Standards and with the Plans for such improvements approved in writing by Seller. Without limiting the generality of the foregoing, Purchaser shall strictly adhere to the impervious area calculations established for the Lots as set forth in the Design Guidelines. Within thirty (30) days after Purchaser substantially completes construction of the townhouse units to be located on each Lot Block, Purchaser shall provide Seller with a copy of as-built plans for such townhouse units, certified by a licensed engineer, setting forth the impervious areas within each Lot. If any building material samples with respect to the improvements have been submitted to and approved by Seller, the building materials actually used by Purchaser shall be in strict accordance with the samples so approved. Improvements constructed or installed by Purchaser, including, without limitation, any landscaping elements, which do not conform to the Governing Standards and approved Plans shall be removed, altered or replaced by Purchaser, at its sole cost, so that such improvements are made to conform to the same. The removal, alterations or replacements shall be completed within fifteen (15) days after written demand by Seller. If, however, such work is not reasonably susceptible of being completed within the fifteen (15) day period, Purchaser shall have such additional time to complete the work as may be reasonable, provided that Purchaser commences the work within the fifteen (15) day period, diligently prosecutes the work thereafter, and in all events completes the work within forty-five (45) days after Seller's demand. If Purchaser fails to complete such work as provided in this Paragraph, Seller shall have the right to do so. If Seller does so, Purchaser, within ten (10) days after written request by Seller, shall reimburse to Seller the direct and reasonable costs incurred by Seller to complete such work (in which case Seller shall provide copies of paid invoices or other reasonable supporting evidence to Purchaser with respect to the costs incurred by Seller), plus fifteen percent (15%) for Seller's overhead in undertaking this work. If Purchaser fails to make full reimbursement to Seller as required under this Paragraph, then any outstanding sums shall be deemed Cure Costs under Paragraph 8(g)(i) and Seller may draw upon the Damage Fund in accordance with Paragraph 8(g)(ii) to pay those Cure Costs as if the Cure Costs had been incurred under Paragraph 8(g)(i). The Damage Fund shall be not deemed to be a limitation upon Purchaser's liability for failure to construct or install improvements in accordance with the Governing Standards and approved Plans or any other default by Purchaser in its obligations under this Paragraph.

(o) Seller reserves the right, without Purchaser's consent or joinder, to amend the Preliminary Plan or Site Plan as they relate to any land other than the Property, provided that any such amendment shall not materially increase Purchaser's costs of constructing its townhouse product on the Property. Any street names shown in the Preliminary Plan or Site Plan are subject to change by Seller, in its sole and absolute discretion. Purchaser shall not seek to amend the Preliminary Plan or Site Plan.

(p) Except for tests and studies conducted on the Property under Paragraph 18 below, Purchaser shall not perform any work on any Lots not yet acquired by Purchaser. Further, except as provided in this Paragraph 8(p), Purchaser shall not locate any trailer or store any equipment or materials on such Lots or on any other portion of the Clarksburg Project. Seller shall make available to Purchaser a staging area for Purchaser's construction trailer, construction equipment and building materials. Upon Purchaser's use of the staging area, (i) Purchaser shall maintain the staging area in an orderly, neat, and safe condition, (ii) Purchaser's use of the staging area shall be at Purchaser's sole risk and Seller shall not be responsible for any theft or damage to Purchaser's personal property, (iii) Seller shall have the right to relocate the staging area upon thirty (30) days' prior notice to Purchaser, and (iv) upon the earlier of such relocation or fifteen (15) days after Purchaser substantially completes its construction on the Property, Purchaser shall remove all of its equipment and materials from the staging area and restore the area to substantially the condition it was in immediately prior to Purchaser's use of the area. Seller may draw upon the Damage Fund if Purchaser is in breach of this Paragraph. The Damage Fund shall be not deemed to be a limitation upon Purchaser's liability for such breach.

(g) (i) At the time of each settlement, Purchaser shall pay to Seller a contribution of [REDACTED] dollars (\$ [REDACTED]) per Market Rate Lot for each Market Rate Lot then being acquired (the "Advertising Contribution"), to be applied to a community-wide advertising program for Clarksburg Town Center. Purchaser shall not be required to pay the Advertising Contribution for any MPDU Lot. Seller shall have sole and exclusive discretion to formulate and implement the advertising program for the Clarksburg Project and to apply the Advertising Contribution accordingly. With respect to Purchaser's own advertising program, all advertisements proposed to be disseminated and all marketing signs proposed to be erected by or on behalf of Purchaser with respect to the Property shall be in accordance with all applicable laws and governmental regulations and shall be subject to Seller's prior written approval. Further, the proposed location of any such marketing signs shall be subject to Seller's prior written approval. Such approvals shall not be unreasonably withheld or delayed. Seller may, at Purchaser's expense, (i) remove any signs erected by Purchaser that Seller has not approved, or (ii) remove any signs which, in Seller's sole opinion, are no longer required to promote the sale of Purchaser's houses on the Property, provided that Purchaser fails to remove such signs within 24 hours after being requested by Seller to do so. All of Purchaser's advertising shall set forth in a conspicuous manner the Clarksburg Town Center name and logo (or such other marketing name and logo for the Clarksburg Project as may be selected by Seller) and Purchaser shall not identify its development and construction activities with respect to the Property by any other name unless otherwise explicitly agreed to in writing by Seller. At all times that Purchaser is marketing homes upon the Property, Purchaser shall maintain a display of its homes and a supply of its promotional material in the Visitor's Center for the Clarksburg Project. Such display shall be reasonably satisfactory to Seller. Within thirty (30) days after written request by Seller made from time to time, Purchaser shall pay to Seller a pro rata share of the reasonable expenses incurred by Seller to operate and maintain the Visitor's Center. Seller shall provide to Purchaser, within fifteen (15) days after the date of this Contract, an estimated budget setting forth Purchaser's pro rata share of such expenses. During the marketing period and prior to the opening of Purchaser's model home(s), Purchaser's representative shall occupy a portion of the Visitor's Center, as designated by Seller, during normal sales hours for the purpose of providing information about Purchaser's housing product. Purchase acknowledges that it is familiar with Seller's policies and procedures regarding displays, exhibits and other promotional items to be used in the Visitor's Center and shall abide by and comply with such policies and procedures as may be modified from time to time by Seller.

(ii) Purchaser shall fully cooperate with all outside real estate brokers and offer a market rate selling commission for their services. Purchaser shall not take any direct action that reasonably could be anticipated to harm, diminish or adversely affect the positive relationship between the general brokerage community and the Clarksburg Project. Purchaser shall promote realtor cooperation in the Clarksburg Project by displaying "Brokers Warmly Welcomed" in all print and electronic media advertising. Nothing in this subparagraph shall be deemed to create any obligation or liability on the part of Seller with respect to the payment of any brokerage commissions in the sale of a Lot by the Purchaser and Purchaser shall indemnify, hold harmless, and defend Seller against all loss, liability or expense, including reasonable attorneys' fees and litigation costs, incurred by Seller resulting from any claim related to any such brokerage commissions.

(r) If any sum becomes due from either party (the "Payor") to the other party (the "Payee") under this Paragraph 8 and the Payor fails to pay the sum as and when required, the outstanding sum shall bear interest from its due date until paid at the "Prime Rate" plus three percent (3%). The term "Prime Rate" means the prime rate of interest for large money center banks as published in the Money Rates section of the Wall Street Journal as of the date closest to (but before) the due date of such sum. If the Wall Street Journal ceases to publish such rate, the Prime Rate shall be determined by reference to such other business newspaper or periodical that regularly publishes such rate as may be selected by the Payee.

(s) (i) Purchaser acknowledges that, prior to the date of this Contract, it was advised by Seller of the matters set forth in Exhibit "M" attached to and made a part of this Contract. Purchaser shall make all disclosures to its Home Buyers required by applicable law in the sale of homes upon the Property, including, without limitation, (i) notices and disclosures required under the Maryland Homeowners Association Act (including the Association Disclosure

Statement), (ii) the Water and Sewer Charges Notice, (iii) the Tax District Notice, and (iv) the Special Protection Area disclosure required pursuant to Section 40-12 of the Montgomery County Code, which Special Protection Area disclosure shall be substantially in the form attached to and made a part of this Contract as Exhibit "N". Within thirty (30) days after entering into any sales contract with a Home Buyer for a Lot, Purchaser shall provide Seller with a written acknowledgement signed by the Home Buyer of the Home Buyer's receipt of the Association Disclosure Statement and true and complete copies of the notices referenced as items (ii) through (iv) above, each signed by the Home Buyer. Purchaser shall be responsible for all representations made by Purchaser and its agents to Home Buyers and lessees of homes upon the Property and Purchaser shall indemnify Seller for all loss, liability or expense, including attorneys' fees, incurred by Seller as a result of any breach of Purchaser's obligations as set forth in this subparagraph. Prior to Purchaser commencing sales of Lots to Home Buyers, Purchaser shall provide Seller with a sample form of sales contract including all addenda thereto that Purchaser intends to use for the sale of Lots. Thereafter, Purchaser shall promptly provide Seller with any material amendments to such form of sales contract or addenda. Upon the reasonable request of Seller and/or the Utility Company as may be made within two (2) years after the date on which Purchaser settles on a Lot with Seller, Purchaser shall also promptly provide the requesting party with copies of the executed sales contract between Purchaser and the Home Buyer for such Lot. Such executed contract may be redacted to delete specific business terms but in all events the contract shall identify all provisions relating to the required notices and disclosures referenced in this Paragraph 8(s). Seller is reviewing Purchaser's sales contracts solely for its own purposes and such review shall not be construed as a representation or warranty by Seller of the legal sufficiency or factual accuracy of any matters set forth in Purchaser's sales contracts or as to any other matter whatsoever.

(ii) Within thirty (30) days after the end of each calendar year quarter, Purchaser shall provide to Seller a written report certifying (A) all Lots for which Purchaser has entered into sales contracts with Home Buyers during the preceding quarter, or (B) that Purchaser did not enter into any sales contracts for Lots with Home Buyers during the preceding quarter. For each Lot that has been placed under contract, the quarterly report to Seller shall identify the lot and block number, address, and name of the Home Buyer. Purchaser's obligation to provide Seller with the foregoing quarterly sales report shall continue until Purchaser has sold all of the Lots.

(t) If Purchaser at any time deems it necessary to file a plat of resubdivision with respect to all or any portion of the Property, such plat(s) of resubdivision shall be subject to Seller's review and written approval prior to submission of the such proposed plat(s) to the appropriate governmental authorities. All costs associated with any such plat(s) of resubdivision, including, without limitation, preparation and recording charges, shall be Purchaser's sole responsibility. No such plat(s) shall change the number of Lots comprising the Property or materially or adversely impact any portion of the Clarksburg Project other than the Property.

9. DEFAULT

(a) If Seller fails to settle on any Lots when required by this Contract, or if Seller shall otherwise breach or default under any of the provisions of this Contract, Purchaser's sole remedy shall be either (i) to receive a refund of the Deposit, following which this Contract shall terminate and the parties shall be relieved of all liability to each other, or (ii) to seek specific performance of this Contract. Purchaser shall not be entitled to seek or recover damages from Seller for any breach or default under this Contract. Despite the foregoing, if Seller breaches or defaults in the performance of any of its obligations under Paragraphs 8, 14, or 16 which are required to be performed after settlement, Purchaser may exercise any and all rights and remedies, at law or in equity, which may be available for such breach or default.

(b) If Purchaser fails to settle on the Property when required by this Contract, or if Purchaser shall otherwise breach or default in the performance of any of its obligations to be performed under this Contract at or prior to settlement, the Deposit shall be delivered by Escrow Agent to Seller as complete and liquidated damages and as Seller's sole remedy for Purchaser's breach or default. Thereafter, this Contract shall terminate and Seller and Purchaser shall be relieved of further liability under this Contract, at law or in equity. Seller and Purchaser

acknowledge that it would be extremely impractical and difficult to ascertain the actual damages which would be suffered by Seller if Purchaser fails to consummate the purchase of the Property as and when contemplated by this Contract. Seller and Purchaser have considered carefully the loss to Seller occasioned by taking the Property off the market as a consequence of the negotiation and execution of this Contract, and the other damages, general and specific, which Seller will suffer as a result of Purchaser's failure to settle and Seller and Purchaser have determined that the amount of the Deposit is a fair and reasonable estimate of those damages. Despite the foregoing, the liquidated damages provisions of this Paragraph 9(b) shall not apply to any breach or default by Purchaser in its obligations under Paragraphs 8, 14, 15, 16, 18(d), 29, 30, 31, and 34 and Seller may exercise any and all rights and remedies, at law or in equity, which may be available for any such breach or default.

(c) Neither Seller nor Purchaser shall exercise any rights and remedies for the other party's breach or default under this Contract unless it has first given written notice to the other party specifying the breach or default and the other party fails to cure such breach or default within ten (10) days after the notice is given. The ten (10) day notice and cure period, however, shall not apply to any failure of Purchaser to settle as and when required under Exhibit "E" or to post the Deposit as required under Paragraph 4(a).

(d) [INTENTIONALLY DELETED]

(e) If Seller or Purchaser fails to substantially complete any development work required to be performed by such party under this Contract in a timely manner because of "Force Majeure", such party will not be deemed to be in breach or default under this Contract in regard to such work. The term "Force Majeure" means delay caused by strikes, civil riots, war, casualty, Acts of God, shortage of labor or materials, adverse weather conditions not reasonably anticipated, act or failure to act of governmental authorities (including failure or delay in issuing necessary approvals, permits and licenses), or other causes beyond Seller's or Purchaser's reasonable control.

(f) In addition to any other breach or default of Purchaser hereunder, the following shall be deemed events of default by Purchaser under this Contract for which Seller may exercise the remedies in Paragraph 9(b) above: (i) Purchaser's inability to pay its debts as they become due, insolvency, or filing a petition for bankruptcy, or (ii) the suspension, revocation or denial by applicable governmental authorities of any license required to be held by Purchaser for the construction of houses upon the Lots.

10. ADJUSTMENTS AT SETTLEMENT

(a) At each settlement, real estate taxes, including any Tax District Assessment, and the Water and Sewer Charges shall be adjusted to the date of settlement and thereafter assumed and paid by Purchaser. Purchaser shall be responsible for the entire amount of any development impact taxes imposed on a Lot. If the Tax District is subsequently implemented, Purchaser shall be entitled, to the extent allowable under County law, to a credit/refund against any Tax District Assessment payable by Purchaser up to the full amount of the development impact taxes paid by Purchaser. Purchaser shall be responsible for obtaining any such credit/refund from the County. If such credit/refund is not allowable under County law, in whole or in part, then Seller shall reimburse Purchaser for any Tax District Assessments paid by Purchaser for which no such credit/refund was allowed, up to a maximum amount equal to one (1) annual installment of the Tax District Assessment applicable to such Lot (the "Credit Reimbursement"). The Credit Reimbursement shall be paid by Seller to Purchaser within thirty (30) days after Seller receives reasonable documentation that Purchaser was not granted a credit/refund by the County. The Credit Reimbursement shall be personal to Purchaser and in no event shall any Home Buyer or other purchaser of a Lot from Purchaser be entitled to receive any Credit Reimbursement from Seller for any Tax District Assessment payable by the Home Buyer or other purchaser.

(b) Also at settlement, all sums required to be paid by Purchaser under Paragraphs 8(g) (Damage Fund); 8(h)(ii) (Connection Fee); 8(j) (Association Contribution); and 8(q) (Advertising Contribution), shall be so paid.

11. SETTLEMENT COSTS

Purchaser shall pay for examination of title, title insurance, survey (if ordered by Purchaser), tax certificates, notary fees, recording charges, and, except as otherwise expressly provided in this Paragraph 11, all other costs of settlement. Seller and Purchaser shall equally pay all recordation and transfer taxes imposed on the deeds conveying the Property to Purchaser. Each party shall pay its own attorneys' fees.

12. RISK OF LOSS

Until execution and delivery of the deed, the risk of loss or damage to each Lot by fire or other casualty is assumed by Seller.

13. CONDEMNATION

If, at or prior to the time of any settlement, all of the Lots remaining to be acquired by Purchaser shall be condemned or shall be the subject of a condemnation proceeding by any governmental or other authority having the power of eminent domain (each of the foregoing being referred to as a "Taking"), this Contract shall terminate, the Deposit shall be promptly refunded to Purchaser (provided that no default exists by Purchaser under this Contract) and thereafter Seller and Purchaser shall be relieved of further liability under this Contract. If a Taking occurs of some but not all of the Lots remaining to be acquired by Purchaser, Purchaser shall have the option of (a) proceeding to settlement on all such remaining Lots in accordance with this Contract, in which case Seller shall assign to Purchaser, at the time of settlement on the Lots which are the subject of the Taking, all of Seller's rights to the award paid or to be paid for the Taking of such Lots, or (b) deleting from the Property any Lots which are the subject of the Taking, in which case Seller shall retain the exclusive rights to all of the award paid or to be paid for the Taking of such Lots.

14. BROKERAGE

Seller warrants to Purchaser and Purchaser warrants to Seller that it has not dealt with any real estate broker, agent or finder in connection with this transaction and that no right to or claim for commission or other compensation has been created by its actions with respect to this Contract. Seller and Purchaser shall indemnify, hold harmless, and defend each other against all loss, liability or expense, including reasonable attorneys' fees and litigation costs, incurred by the other to the extent one or the other is shown to be in breach of the foregoing warranties.

15. DELIVERY OF PLANS AND DATA

To the extent not already received by Purchaser, Seller, within ten (10) days after the date of this Contract, shall make available to Purchaser for inspection and copying at the offices of Seller and/or Seller's engineers, the plans, surveys, title materials, engineering materials, environmental studies, and other studies, reports, and materials relating to the Property which are listed on Exhibit "O" attached to and made a part of this Contract (the "Property Materials"). Seller makes no representation or warranty about the accuracy, reliability, or completeness of the Property Materials. If this Contract is terminated for any reason whatsoever, other than a default by Seller, Purchaser shall deliver to Seller, within ten (10) days after the termination and without charge, (i) all of the Property Materials previously obtained from Seller and its engineers, and (ii) copies of all soils reports, environmental studies, plans, site engineering materials, title materials, surveys, marketing materials and other studies, reports, materials, and information relating to the Property which were generated by or for Purchaser or its agents, excluding, however, architectural materials ("Purchaser's Materials"). Notwithstanding any other provision of this Contract, if Purchaser is entitled to receive all or any portion of the Deposit upon termination of this Contract, the return of such Deposit shall be conditioned upon Seller's receipt from Purchaser of the Purchaser's Materials. All of Purchaser's Materials shall be fully paid for by Purchaser. Purchaser makes no representation or warranty about the accuracy, reliability, or completeness of Purchaser's Materials. At any time after Seller

is entitled to Purchaser's Materials, Purchaser, upon request, shall assign to Seller all of Purchaser's rights in and to Purchaser's Materials, to the extent assignable.

16. COOPERATION IN DEVELOPMENT

Each party shall reasonably cooperate with the other party, and the other party's successors and assigns, to facilitate improvement, development, and use of the Property and the balance of the Clarksburg Project, provided the same shall be without expense or liability to the party whose cooperation is requested. However, wherever this general obligation of cooperation would conflict with any specific provision of this Contract, the specific provision shall control. Further, Seller shall not be obligated to cooperate in any matter that would interfere with, make more costly, or otherwise be detrimental to development or use of the Clarksburg Project in substantial accordance with the Preliminary Plan or Site Plan. Purchaser shall not oppose any development approvals sought by Seller or Seller's successors or assigns for any portion of the balance of the Clarksburg Project.

17. DELIVERY OF POSSESSION

Seller shall give possession of each Lot to Purchaser at the time of settlement on that Lot, free and clear of any licensees, occupants or tenants.

18. TESTS AND STUDIES - RIGHT OF ENTRY; INDEMNITY

(a) During the time this Contract remains in effect, Purchaser shall have the right, at its own risk and expense, to go on the Property and to cause soils, engineering, environmental, and other tests and studies, including market analyses, development studies, and financial feasibility studies, to be made with respect to the Property. If Purchaser determines, in its sole and absolute discretion, that the acquisition or development of the Property is not warranted, Purchaser shall have the right, exercisable by written notice given to Seller within the "Study Period" (defined below), to terminate this Contract. The "Study Period" shall be that period beginning on the date of this Contract and ending on the date which is ten (10) days after the date of this Contract. If Purchaser fails to give Seller written notice of termination within the Study Period, Purchaser shall no longer have any right of termination under this Paragraph 18. If this Contract is terminated under this Paragraph 18, the Escrow Agent shall refund the Deposit to Purchaser (provided that Purchaser is not in default under this Contract) and thereafter Seller and Purchaser shall be relieved from further liability hereunder, at law or in equity.

(b) By the expiration of the Study Period, Purchaser shall have inspected the Property and become fully familiar with its physical and environmental condition and its zoning and development status. Except as otherwise expressly provided in this Contract, the sale of the Property to Purchaser shall be "as is" and "where is". In entering into this Contract, Purchaser has not been induced by and has not relied upon any representations, warranties or statements about the Property or the Clarksburg Project, whether express or implied, oral or written, made by Seller or any member, employee, agent, or other representative of Seller which are not expressly set forth in this Contract. Without limiting the generality of this Paragraph 18(b), Purchaser acknowledges that Seller does not make any representation or warranty with regard to the value, profitability, development potential, or marketability of the Property, the environmental condition of the Property, or the existing or future use or development of other portions of the Clarksburg Project.

(c) In conducting its tests and studies upon the Property, Purchaser shall not damage or remove any trees from the Property. Nothing in this Paragraph 18 shall be deemed to give Purchaser the right to perform any development or construction work on any Lot prior to settlement on that Lot.

(d) Purchaser shall indemnify, hold harmless, and upon request by Seller, defend Seller, and its agents and employees, against all suits, damages, liabilities, claims, and expenses, including reasonable attorneys' fees and litigation costs, incurred by Seller, or its agents or employees, as a result of (i) the tests and studies conducted by Purchaser (or its agents, contractors, or employees) upon the Property, or (ii) any action, inaction or other matter

attributable to Purchaser (or its agents, contractors, or employees) arising in connection with Purchaser's ownership or development of the Property or its activities within the rest of the Clarksburg Development, except for such matters caused by Seller's gross negligence or willful misconduct. Prior to exercising its right of entry under this Paragraph, Purchaser shall obtain a policy of commercial general liability insurance providing coverage of at least One Million Dollars (\$1,000,000.00), combined single limit, against death, bodily injury, and property damage arising out of the activities of Purchaser, and its agents, employees, and contractors, upon the Property. The policy shall be issued by an insurance company licensed to do business in Maryland, shall provide coverage on an "occurrence basis", shall name Seller as an additional insured, and shall not be subject to cancellation or amendment without the insurance company giving at least thirty (30) days prior written notice to Seller. Purchaser shall furnish to Seller reasonable evidence of this coverage prior to its first entry upon the Property. Purchaser shall maintain the policy in full force and effect until the later of (A) the last settlement under this Contract, or (B) termination of Purchaser's maintenance responsibilities, if any, for Off-Lot Sediment Control Devices pursuant to Paragraph 8(c), as confirmed in writing by Seller.

19. NOTICES

All notices and other communications under this Contract shall be in writing and shall be deemed duly given if (i) personally delivered, with signed and dated receipt, (ii) sent by reputable commercial overnight delivery service, with signed and dated receipt, (iii) mailed by certified mail, return receipt requested, first class, postage prepaid; or (iv) sent by telefax with evidence of transmission and receipt, as follows:

Seller: c/o TERRABROOK®
42935 Waxpool Road
Ashburn, Virginia 20148
Attn: Tracy Graves
Fax: 703-858-7380

With copies to: TERRABROOK®
3030 LBJ Freeway, LB-6
Suite 1500
Dallas, Texas 75234
Attn: Cynthia A. Stephens, Esq.
Fax: 972-443-6192

and

John R. Orrick, Jr., Esq.
Linowes and Blocher LLP
1010 Wayne Avenue, 10th Floor
Silver Spring, Maryland 20910
Fax: 301-495-9044

Purchaser: Miller and Smith Land Inc.
1568 Spring Hill Road, Ste. 400
McLean, Virginia 22102
Attn: Michael Capretti
Fax: 703-821-2040

With copies to: Charles F. Stuart, Jr., Esq.
Vice President & General Counsel
The Miller & Smith Cos.
1568 Spring Hill Road, Ste. 400
McLean, Virginia 22102
Fax: 703-821-2040

Each party shall be responsible for notifying the other of any change of address or telefax number.

20. ENTIRE AGREEMENT

This Contract contains the entire agreement between the parties regarding the subject matter of this Contract. There are no promises, agreements, conditions, undertakings, warranties or representations, oral or written, express or implied, between them relating to this subject matter, other than as herein set forth. This Contract is intended by the parties to be an integration of all prior or contemporaneous promises, agreements, conditions, negotiations and undertakings between them. This Contract may not be modified orally or in any other manner than by an agreement in writing signed by all the parties or their respective successors in interest. The Escrow Agent shall not be required to join in the execution of any amendment unless the amendment materially modifies the Escrow Agent's rights or obligations under this Contract. In any event, failure of the Escrow Agent to execute any amendment shall not affect the validity of the amendment as between Seller and Purchaser. This Contract may be executed in several counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

21. SURVIVAL

(a) The terms and provisions of this Contract shall survive each settlement and the execution and delivery of each deed and shall not be merged therein, except that the representations and warranties contained in Paragraph 6 shall, as to each Lot, survive settlement for a period of one (1) year only from the date of the settlement on that Lot. If either party alleges that any representation or warranty contained in Paragraph 6 has been breached as concerns any Lot, that party must file suit for such breach no later than one (1) year after the date of settlement on that Lot or the suit shall be forever barred.

(b) Despite any contrary provision of this Contract, if Purchaser acquires a portion of the Property but this Contract terminates without Purchaser having acquired all of the Property, all of the terms and provisions of this Contract shall remain in full force and effect as they pertain to the portion of the Property acquired by Purchaser. Moreover, Seller's obligations under Paragraph 14 and Purchaser's obligations under Paragraphs 8(q)(ii), 14, 15, 18(d), and 31 shall survive any termination or expiration of this Contract.

22. PARTIAL INVALIDITY

If any term, covenant or condition of this Contract or its application to any persons or circumstances shall be invalid or unenforceable, the remainder of this Contract, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected, and each term shall be valid and enforceable to the fullest extent permitted by law.

23. GOVERNING LAW; WAIVER OF JURY TRIAL

All questions with respect to the construction of this Contract and the rights and liabilities of the parties shall be determined in accordance with the laws of the State of Maryland, without regard to choice of laws principles. Each party waives all right to a jury trial with respect to any dispute relating to or arising out of this Contract and acknowledges that this waiver is made knowingly, voluntarily, and after consulting with (or having had the opportunity to consult with) counsel of its own choosing as to the meaning of this waiver.

24. INTERPRETATION

The paragraph headings used in this Contract are for reference and convenience only and shall not enter into the interpretation of this Contract. If any date upon which action is required under this Contract shall be a Saturday, Sunday or legal holiday, the date for such action shall be extended to the first regular business day after such date which is not a Saturday, Sunday or legal holiday. This Contract represents the results of bargaining and negotiations between the

parties and of a combined draftsmanship effort. Consequently, Seller and Purchaser expressly waive and disclaim, in connection with the interpretation of this Contract, any rule of law requiring that ambiguous or conflicting terms be construed against the party whose attorney prepared this Contract or any earlier draft of this Contract. The recitals contained in this document are incorporated in and made a part of this Contract. The date of this Contract shall be the last date upon which either Seller or Purchaser executes this Contract as shown on the signature page of this Contract and such date shall be inserted into the first paragraph of this Contract.

25. BINDING EFFECT

Subject to the restrictions contained in Paragraph 26, all of the covenants, conditions and obligations contained in this Contract shall be binding upon and inure to the benefit of Seller and Purchaser and their respective successors and assigns.

26. ASSIGNMENT

Neither Purchaser, nor any permitted assignee under this Paragraph, shall sell, transfer or assign any interest in this Contract without the prior written consent of Seller in each instance. Such consent may be granted or denied in Seller's sole and absolute discretion. Despite the foregoing, Purchaser may assign this Contract, without the prior written consent of Seller, to any entity which, directly or indirectly, controls, is controlled by, or is under common control with Purchaser. For the purposes of this Paragraph, (i) an entity controls Purchaser if the entity exercises managerial control over Purchaser and owns at least fifty-one percent (51%) of the beneficial interests in Purchaser; (ii) an entity is controlled by Purchaser if Purchaser exercises managerial control over the entity and owns at least fifty-one percent (51%) of the beneficial interests in the entity, and (iii) an entity is under common control with Purchaser if substantially the same persons and entities exercise managerial control over both the entity and Purchaser and own at least fifty-one percent (51%) of the beneficial interests in both the entity and Purchaser. Purchaser shall promptly give Seller written notice of any such permitted assignment and reasonable evidence that the assignee is a permitted assignee and Seller and Purchaser shall enter into a written agreement acknowledging any such permitted assignment. Seller shall have the right to reasonably approve the name of any assignee, and in no event shall the project name be used as part of an assignee's name unless expressly agreed to by Seller in writing. The cumulative sale, transfer or assignment of more than forty-nine percent (49%) of the beneficial interests in Purchaser or any permitted assignee shall be deemed to be an assignment requiring Seller's consent under this Paragraph. Any sale, transfer or assignment in violation of this Paragraph shall be null and void. No permitted assignment shall relieve Purchaser of any obligation or liability under this Contract.

27. NO RECORDATION

Neither this Contract nor any notice of this Contract shall be recorded.

28. TIME OF ESSENCE

Time shall be of the essence as to all matters under this Contract.

29. RIGHTS OF REPURCHASE

(a) (i) After settlement on any Lot and until the "Commencement of Construction" (defined below) on that Lot, Seller shall have a right of first refusal in accordance with this Paragraph 29 if Purchaser desires to sell the Lot (the "First Refusal Right"). If Purchaser receives and is willing to accept any bona fide written offer for such Lot (an "Offer"), Purchaser shall furnish a true and complete copy of the Offer to Seller. The Offer furnished to Seller shall include, without limitation: (A) the name and address of the offeror; (B) a description of the Lots covered by the Offer; (C) the purchase price offered; (D) the terms of payment, including the terms of any seller financing; (E) the settlement date; and (F) all other material terms of sale.

(ii) For a period of thirty (30) days from its receipt of the Offer (the "Exercise Period"), Seller shall have the exclusive right and option to elect to repurchase the Lot that is the subject of the Offer for an amount equal to the sum of the Per Lot Price (including escalator, if any) and the Recreational Facilities Contribution paid by Purchaser to Seller for that Lot (the "Repurchase Price") and otherwise upon the terms and conditions set forth in this Paragraph 29. If Seller does not timely exercise its First Refusal Right, Purchaser shall be free to make the sale of the Lot to the bona fide offeror, provided, however, that the sale must be made substantially in accordance with the terms and conditions set forth in the Offer as furnished to Seller and the sales contract between Purchaser and the bona fide offeror shall contain an express acknowledgement that the terms and conditions of this Contract shall be binding on the bona fide offeror with respect to such Lot(s), including, without limitation, the provisions of Paragraphs 8, 16, 29, 30, 31, and 34. If the sale to the bona fide offeror is not so consummated, Seller shall again have a First Refusal Right with regard to any new or revised terms that Purchaser is willing to accept for the Lot(s) covered by the Offer. Whether or not Seller exercises its First Refusal Right with regard to any Offer received for specific Lots, Seller's First Refusal Right shall remain in full force and effect with respect to any Offer which Purchaser is willing to accept for any other Lots.

(iii) For the purposes of this Paragraph 29(a), a sale, transfer, or assignment of a majority of the beneficial interests in Purchaser shall also be deemed to be a sale as to which Seller's First Refusal Right shall be applicable. This Paragraph 29(a), however, shall not apply to a foreclosure, deed in lieu of foreclosure, or a sale in the ordinary course of Purchaser's business (i.e., the sale of a Lot to a Home Buyer where Purchaser agrees to construct a home upon such Lot).

(iv) Despite the foregoing, if not sooner terminated because of Commencement of Construction, Seller's First Refusal Right shall expire as to each Lot on the date which is seven (7) years after the date that Purchaser settles on that Lot.

(b) In the event that Commencement of Construction has not occurred on any Lot within two (2) years after settlement on that Lot (the "Outside Commencement Date"), Seller shall have the option to repurchase the Lot from Purchaser for an amount equal to the Repurchase Price for that Lot and otherwise upon the terms and conditions set forth in this Paragraph 29 (the "Repurchase Option"). If Seller desires to exercise the Repurchase Option as to a particular Lot, it shall give written notice to Purchaser within one hundred twenty (120) days after the Outside Commencement Date with respect to that Lot. If Seller does not give such notice within the one hundred twenty (120) day period, Seller shall be deemed to have waived the Repurchase Option with respect to that Lot [but not with respect to any other Lot as to which the one hundred twenty (120) day period has not expired]. If Commencement of Construction has occurred on a Lot on or before the Outside Commencement Date, the Repurchase Option as to that Lot shall automatically expire and be of no further force or effect without the requirement that any further instruments be executed or recorded. The Outside Commencement Date shall be extended for a period of time equal to any period of prevention, delay or stoppage of construction experienced by Purchaser due to strikes, civil riots, war, invasion, fire or other casualty, Acts of God, unavailability of labor or materials, default by Seller, unusually severe weather conditions not reasonably anticipated, act or failure to act of governmental authorities, or other causes beyond the reasonable control of Purchaser. Financial inability and unfavorable market conditions shall not be deemed to be such causes.

(c) (i) In the case of Seller's exercise of the First Refusal Right or the Repurchase Option, Seller shall pay to Purchaser the Repurchase Price for each Lot being repurchased. The Repurchase Price shall be paid in cash at the time of settlement. Within seven (7) days after Seller gives notice to Purchaser that it is exercising the First Refusal Right or the Repurchase Option, as the case may be (each an "Exercise Notice"), Seller shall deliver to the Escrow Agent a good faith deposit of One Thousand Dollars (\$1,000.00) per Lot being repurchased (the "Option Deposit") which shall be applied at settlement to the price for such Lot. Settlement shall be held within sixty (60) days after the giving of the Exercise Notice and at the place designated for settlements in Paragraph 7(c). Purchaser shall convey title to Seller at the time of settlement by the usual form of special warranty deed. Title to the Lot(s) being repurchased shall be free of all liens and encumbrances, except for the Permitted Exceptions which affected the Lot(s) at

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

31. CONFIDENTIALITY

Except for disclosure to "Permitted Persons" (defined below), Purchaser shall not release, disclose, publish or otherwise disseminate any information ("Confidential Information"): (a) concerning the terms and conditions of this Contract; or (b) obtained by Purchaser in connection with its review of the Property, including, without limitation, information contained in the Property Materials and other documents made available by Seller, obtained by Purchaser or its agents, or obtained from any third parties. "Permitted Persons" shall mean: officers, directors, shareholders, members, and/or partners of Purchaser (as the case may be); persons employed by or retained by Purchaser for the purpose of conducting studies of the Property; and Purchaser's accountants, attorneys, lenders, and investors, and any governmental authority or other person or entity to which disclosure is required by applicable laws or legal process. In making any disclosure to a Permitted Person, Purchaser shall instruct the Permitted Person to treat the Confidential Information, and the results of their studies or analysis, confidentially and to disclose any information related to this Contract or the Property

only to Purchaser, Seller, or another Permitted Person, but Purchaser shall have no liability to Seller and it shall not be a default hereunder if the Permitted Person does not comply with the confidentiality requirement.

32. NO WAIVER

No provision of this Contract shall be deemed to have been waived unless expressly waived in writing or otherwise waived in accordance with this Contract. Except where time periods are expressly provided in this Contract for the exercise of rights or remedies, no delay or forbearance by either party in the exercise of any of its rights or remedies under this Contract shall result in a waiver of those rights or remedies.

33. OPTION CONSIDERATION

Seller and Purchaser acknowledge that certain real estate contracts, in form similar to this Contract, have been construed to be option contracts. Accordingly, simultaneous with the execution of this Contract, Purchaser has paid to Seller the sum of One Dollar (\$1.00) ("**Option Consideration**"), the receipt and sufficiency of which are acknowledged by Seller, as consideration to Seller for the granting of any and all options to Purchaser that may be contained in this Contract. The Option Consideration is separate and apart from the purchase price for the Property and will in no event be returned to Purchaser.

34. MPDU PROVISIONS

(a) Purchaser shall construct "MPDUs" on the MPDU Lots. Purchaser shall commence construction of a building on each MPDU Lot within forty-five (45) days after settlement on such Lot. The exterior building materials used in the construction of the MPDUs shall be substantially equal in quality to the exterior building materials used by Purchaser in the construction of dwellings units on the Market Rate Lots. Purchaser shall comply with all applicable County requirements in regard to the construction, offering, and sales of the MPDUs on the Property and shall enter into and execute such agreements and other instruments as the County may require to set forth Purchaser's obligations with respect to the MPDUs.

(b) In the event of breach of any of the covenants under this Paragraph 34, Seller may exercise any rights or remedies which may be available at law or in equity in regard to the breach, including, without limitation, bringing a suit for specific performance or other injunctive relief. Further, in the event of such breach by Purchaser and Purchaser fails to commence diligent and good faith efforts to cure the breach within fifteen (15) days after notice by Seller (or Purchaser's discontinuance of those efforts after commencing the same), Seller shall be entitled to enter upon the Property and take possession of any MPDU Lots upon which MPDUs have not been completed. Thereafter Seller shall have the right to perform any acts with respect to such MPDU Lots that Seller may deem advisable, in its sole and absolute discretion, to satisfy the MPDU requirements of the County or this Agreement, including, without limitation, completing the MPDUs on such MPDU Lots at Purchaser's expense and/or selling or leasing the same in accordance with the County's MPDU program. Purchaser constitutes and appoints Seller as its true and lawful attorney-in-fact with full power of substitution to complete the work in the name of Purchaser and additionally empowers Seller as follows: (i) to make such additions and changes in the plans for the MPDUs as may be necessary or desirable in the judgment of Seller to complete the construction of the MPDUs; (ii) to employ such contractors, sub-contractors, agents, architects and inspectors as may be required for this purpose; (iii) to pay, settle or compromise all existing bills and claims which are or may be liens against the MPDU Lots or as may be necessary or desirable for the completion of the work; (iv) to execute all applications and certificates that may be required in the name of Purchaser; and (v) to do any and every other act with respect to the construction and/or sale or lease of the MPDUs that Purchaser may do in its own behalf. This power of attorney shall be deemed to be irrevocable, such power being coupled with an interest. Within ten (10) days after written request by Seller, Purchaser shall execute and deliver to Seller such documents confirming Seller's authority and power of attorney in this regard as Seller may desire. Within thirty (30) days after written demand by Seller (which may be made from time to time), Purchaser shall pay to Seller an amount equal to the costs incurred by Seller in connection with its construction, sales, or leasing of such MPDUs, plus fifteen

percent (15%) as an administrative and overhead fee (the "MPDU Costs") but less the rents, issues, and profits of any sale or lease of MPDUs received by Seller. If Purchaser fails to make full reimbursement to Seller of such MPDU Costs, then any outstanding sums shall be deemed Cure Costs under Paragraph 8(g)(i) and Seller may draw upon the Damage Fund in accordance with Paragraph 8(g)(ii) to pay those Cure Costs as if the Cure Costs had been incurred under Paragraph 8(g)(i). The Damage Fund shall be not deemed to be a limitation upon Purchaser's liability for failure to reimburse Seller for any MPDU Costs or any other default by Purchaser in its obligations under this Paragraph. In addition to any other remedy available to Seller to recover the MPDU Costs, Seller shall have the right (but not the obligation) to collect and retain the rents, issues, and profits of any sale or lease of MPDUs to the extent of the unpaid MPDU Costs. Any proceeds of such sale or lease received by Seller in excess of all unpaid MPDU Costs shall be remitted to Purchaser or its mortgagee with respect to the Property.

(c) The provisions of this Paragraph 34 shall be a covenant running with the land of the MPDU Lots and shall be set forth in a separate instrument substantially in the form attached to and made a part of this Contract as Exhibit "S" (the "Use and Construction Agreement") to be executed by Seller and Purchaser at the time of each settlement on an MPDU Lot. The Use and Construction Agreement shall be recorded in the land records prior to any liens securing Purchaser's financing with respect to the MPDU Lots.

35. EXHIBITS

Purchaser acknowledges that it has read and agreed to the provisions of each of the following exhibits that are attached to and made a part of this Contract:

Exhibit "A"	Plan Showing the Clarksburg Project
Exhibit "B"	Description of the Lots
Exhibit "C"	[INTENTIONALLY DELETED]
Exhibit "D"	Deposit Escrow Agreement
Exhibit "E"	Lot Takedown Schedule
Exhibit "F"	Grading Plan
Exhibit "G"	Schedule of Development Responsibilities
Exhibit "H"	Lot Inspection Report
Exhibit "I"	Lot Completion Report
Exhibit "J-1"	Water and Sewer Declaration
Exhibit "J-2"	Notice of Deferred Water and Sewer Charges
Exhibit "K"	Notice of Special Taxing District
Exhibit "L"	Description of Design Guidelines
Exhibit "M"	Montgomery County Standard Disclosures
Exhibit "N"	Special Protection Area Disclosure
Exhibit "O"	List of Property Materials
Exhibit "P"	First Refusal and Repurchase Agreement
Exhibit "Q"	Payment Covenant
Exhibit "R"	NAHB Build America Beautiful Guidelines
Exhibit "S"	Use and Construction Agreement for MPDU Lots

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have signed, sealed and delivered this Contract on the date first written above.

WITNESS:

SELLER:

TERRABROOK CLARKSBURG, L.L.C.,
a Delaware limited liability company

By: Westerra Management, L.L.C., a Delaware limited liability company, its authorized representative

By: Tracy Z. Graves [SEAL]

Name: Tracy Z. Graves

Title: Assistant Vice President

Date: 9-04-01

WITNESS/ATTEST:

PURCHASER:

MILLER AND SMITH LAND INC.,
a Virginia corporation

By: Alvin D. Hall [SEAL]

Name: ALVIN D. HALL

Title: PRESIDENT

Date: 9/6/01

Exhibit "A"

(Plan Showing the Clarksburg Project)

TH.

Exhibit "B"

(Description of the Lots)

Market Rate Lots (Total: 30 Lots)

Block C (12 Lots)

Lots 55, 56, 57, 61, 62, 63, 64, 65, 66, 70, 71, 72

Block D (12 Lots)

Lots 14, 15, 16, 20, 21, 22, 23, 24, 25, 29, 30, 31

Block O (6 Lots)

Lots 9, 10, 11, 15, 16, 17

MPDU Lots (Total: 15 Lots)

Block C (6 Lots)

Lots 58, 59, 60, 67, 68, 69

Block D (6 Lots)

Lots 17, 18, 19, 26, 27, 28

Block O (3 Lots)

Lots 12, 13, 14

Exhibit "C"

[INTENTIONALLY DELETED]

Exhibit "D"

DEPOSIT ESCROW AGREEMENT

THIS AGREEMENT, dated as of this ____ day of _____, 2001, by and among **TERRABROOK CLARKSBURG, L.L.C.**, a Delaware limited liability ("Seller"), **MILLER AND SMITH LAND INC.**, a Virginia corporation ("Purchaser"), and _____ ("Escrow Agent").

RECITALS:

A. Seller and Purchaser have entered into a Real Estate Sales Contract, dated _____ (the "Contract"), for certain real property located in Montgomery County, Maryland.

B. Within two (2) business days after execution of the Contract, Purchaser is required to deliver to the Escrow Agent by certified check or wire transfer the sum of _____ the "Deposit", as such sum may be reduced in accordance with Paragraph 4(b) of the Contract, to secure the performance of Purchaser's obligations under the Contract. Escrow Agent shall immediately deposit such funds into a separate money market account in a federally insured bank. Accrued interest on such funds shall become part of the "Deposit" and shall be paid to whichever party becomes entitled to the Deposit pursuant to the terms of the Contract.

C. Escrow Agent is willing to perform its escrow duties under the Contract and this Agreement, subject, however, to the terms of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants set forth below, and for other good and valuable consideration, the receipt and sufficiency of which each of the parties acknowledges, Seller, Purchaser, and Escrow Agent agree as follows:

1. Escrow Agent acknowledges receipt of the Deposit.
2. Escrow Agent shall perform its escrow duties set forth in the Contract and this Agreement, subject, however, to the terms of this Agreement.
3. If Seller claims entitlement to the Deposit, it shall give written notice to Escrow Agent that Purchaser has defaulted in the performance of its obligations under the Contract beyond the applicable grace period, if any (the "Seller's Notice"). Escrow Agent shall promptly deliver a copy of Seller's Notice to Purchaser. Purchaser shall have ten (10) days after receipt of the copy of the Seller's Notice to deliver written notice to Escrow Agent objecting to the release of the Deposit to Seller ("Purchaser's Objection Notice"). If Escrow Agent does not receive a timely Purchaser's Objection Notice, the Escrow Agent shall deliver the Deposit to Seller. If Escrow Agent does receive a timely Purchaser's Objection Notice, the Escrow Agent shall release the Deposit only upon receipt of, and in accordance with, written instructions signed by Seller and Purchaser or the final order of a court of competent jurisdiction.
4. If Purchaser claims entitlement to the Deposit, Purchaser shall give written notice to Escrow Agent stating that the Seller has defaulted in the performance of its obligations under the Contract beyond the applicable grace period, if any, or that Purchaser is otherwise entitled to the return of the Deposit (the "Purchaser's Notice"). Escrow Agent shall promptly deliver a copy of Purchaser's Notice to Seller. Seller shall have ten (10) days after receipt of the copy of Purchaser's Notice to deliver written notice to Escrow Agent objecting to the release of the Deposit to Purchaser ("Seller's Objection Notice"). If Escrow Agent does not receive a timely Seller's Objection Notice, the Escrow Agent shall deliver the Deposit to Purchaser. If Escrow Agent does receive a timely Seller's Objection Notice, Escrow Agent shall release the Deposit only upon receipt of, and in accordance with, written instructions signed by Seller and Purchaser or the final order of a court of competent jurisdiction.

5. Escrow Agent undertakes to perform only those duties which are expressly set forth in the Contract and this Agreement. Seller and Purchaser acknowledge that these duties are purely ministerial in nature.

6. Escrow Agent may rely and shall be protected in acting or refraining from acting upon any written notice, statement, instruction or request furnished to it under the Contract or this Agreement and believed by it to be genuine and to have been signed or presented by the proper party or parties. Escrow Agent shall be under no duty to make any inquiry as to the form, genuineness, proper execution, or accuracy of the notice, statement, instruction, or request.

7. Escrow Agent shall have no liability under this Agreement or otherwise in connection with its escrow duties, except in the case of Escrow Agent's gross negligence or intentional misconduct. Escrow Agent may consult with counsel of its own choice and shall have full and complete authorization and protection for any action taken or suffered by it in good faith and in accordance with the opinion of its counsel.

8. Escrow Agent may resign and be discharged from its duties or obligations under the Contract and this Agreement by giving notice in writing of its resignation specifying a date when the resignation shall take effect. Such date shall not be earlier than thirty (30) days after the giving of the notice. In the event that Escrow Agent resigns, Seller and Purchaser shall arrange for a mutually acceptable party to assume the duties of Escrow Agent ("New Escrow Agent"). The New Escrow Agent shall execute an instrument evidencing its assumption of the duties of Escrow Agent under this Agreement. Such instrument shall provide that the New Escrow Agent shall have the benefit of all provisions contained in this Agreement for the protection of Escrow Agent. Seller and Purchaser shall notify Escrow Agent promptly of the appointment of the New Escrow Agent and upon receipt of the notice, Escrow Agent shall deliver the Deposit to the New Escrow Agent. If Escrow Agent does not receive notice of the appointment of the New Escrow Agent by the effective date of the Escrow Agent's resignation, the Escrow Agent shall deliver the Deposit to a court of competent jurisdiction.

9. (a) Subject to Paragraph 9(d) of the Contract, if conflicting demands are made or notices are served upon the Escrow Agent with respect to the Contract or this Agreement, Escrow Agent shall refuse to comply with the claims or demands and cease all further proceedings in the performance of this Agreement so long as the disagreement shall continue. In so doing, the Escrow Agent shall not be liable for damages or injuries to Seller or Purchaser or any other person for its failure to comply with the conflicting or adverse demands or notices. Escrow Agent shall continue to refrain or refuse to act until (i) the rights of the adverse claimants have been finally adjudicated in a court assuming jurisdiction of the parties and the Deposit, or (ii) all differences have been adjusted by mutual agreement of the parties and the Escrow Agent shall have been notified of the agreement by a writing signed by Seller and Purchaser. In the alternative, Escrow Agent may, but shall not be obligated to, file a suit in interpleader for a declaratory judgment for the purposes of having the respective rights of the claimants adjudicated and may deliver to the court the Deposit.

(b) If the Deposit is at any time attached, garnished, or levied upon under any court order or if the payment or delivery of the Deposit is stayed or enjoined by any court order, or if any order, judgment or decree shall be made or entered by any court affecting the Deposit, the Escrow Agent is authorized, in its sole discretion, to rely upon and comply with the order, writ, judgment or decree. Escrow Agent shall not be liable to any of the parties or to any other person, firm or corporation by reason of such compliance even though the order, writ, judgment or decree may be subsequently reversed, modified, annulled, set aside or vacated.

10. Upon making disposition of the Deposit in accordance with this Agreement, Escrow Agent shall be deemed fully released and discharged from any and all duties and obligations under the Contract and this Agreement, without the need that any other documentation be executed by Seller or Purchaser.

11. Escrow Agent shall not be responsible for (i) any fluctuations in the interest rate applicable to any Deposit held by it pursuant to or by virtue of this Agreement; (ii) the validity, sufficiency, collectibility, or legal effect of any instrument deposited with Escrow Agent; (iii) the

renewal, extension, or replacement of any letters of credit deposited with Escrow Agent; (iv) the loss or impairment of the Deposit resulting from the failure, insolvency, suspension, conservatorship, or receivership of a financial institution or other depository, or (v) the availability or sufficiency of federal deposit insurance with respect to the Deposit.

12. Seller and Purchaser, jointly and severally, shall indemnify and hold harmless Escrow Agent against all loss, liability, claim, and expense, including attorneys' fees and litigation costs, incurred by Escrow Agent arising out of or in any way related to Escrow Agent's duties under the Contract or this Agreement, except in the case of the Escrow Agent's gross negligence or intentional misconduct.

13. Escrow Agent shall not charge any fees to Seller or Purchaser for its services as Escrow Agent.

14. All notices and communications under this Agreement shall be in writing and shall be deemed duly given if (i) personally delivered with signed and dated receipt, (ii) sent by reputable commercial overnight delivery service, with signed and dated receipt, (iii) mailed by certified mail, return receipt requested, first class, postage prepaid; or (iv) sent by telefax with evidence of transmission and receipt, as follows:

Seller: c/o TERRABROOK®
42935 Waxpool Road
Ashburn, Virginia 20148
Attn: Tracy Graves
Fax: 703-858-7380

With copies to: TERRABROOK®
3030 LBJ Freeway, LB-6
Suite 1500
Dallas, Texas 75234
Attn: Cynthia A. Stephens, Esq.
Fax: 972-443-6192

and

John R. Orrick, Jr., Esq.
Linowes and Blocher LLP
1010 Wayne Avenue, 10th Floor
Silver Spring, Maryland 20910
Fax: 301-495-9044

Purchaser: Miller and Smith Land Inc.
1568 Spring Hill Road, Ste. 400
McLean, Virginia 22102
Attn: Michael Capretti
Fax: 703-821-2040

With copies to: Charles F. Stuart, Jr., Esq.
Vice President & General Counsel
The Miller & Smith Cos.
1568 Spring Hill Road, Ste. 400
McLean, Virginia 22102
Fax: 703-821-2040

Escrow Agent:

Handwritten:
Hank H. H. H.
638 Old Courthouse Rd #320
Vienna, VA 22182
703-821-4000

Each party shall be responsible for notifying the other of any change of address or telefax number.

15. All of the covenants, conditions and obligations contained in this Agreement shall be binding upon and inure to the benefit of the successors and assigns of Seller, Purchaser, and Escrow Agent. This Agreement may be executed in counterparts. Each of such counterparts shall be deemed to be an original document and all of such counterparts together shall be deemed to be one and the same document.

16. This Agreement is intended solely to supplement and implement the provisions of the Contract and is not intended to modify any of the rights or obligations of Seller or Purchaser under the Contract.

17. Purchaser warrants and represents to Escrow Agent that its Tax Identification No. set forth below is correct. If all or any part of the Deposit is held by the Escrow Agent in an interest bearing account, Purchaser's Tax Identification No. shall be used for tax reporting purposes.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have signed, sealed, and delivered this Agreement as of the date and year first written above.

WITNESS:

SELLER:

TERRABROOK CLARKSBURG, L.L.C.,
a Delaware limited liability company

By: Westerra Management, L.L.C., a Delaware limited liability company, its authorized representative

By: [Signature]
Name: Tracy Z. Graves
Title: Assistant Vice President
[SEAL]

WITNESS/ATTEST:

PURCHASER:

MILLER AND SMITH LAND INC.,
a Virginia corporation

By: [Signature] [SEAL]
Name: ALVIN D. HAN
Title: PRESIDENT

Purchaser's Tax Identification No.: 51-173223

ESCROW AGENT:

[Signature]
By: [Signature]
Name: Colleen A. Kruse
Title: V.P. Counsel

Exhibit "E"

(Lot Takedown Schedule)

Settlement No.	Lots to be Acquired	Date of Settlement
1	Lots 55 - 72, Block C	Thirty (30) days after the Development Work (defined in Paragraph 8(a) of the Contract) is substantially completed for the Lots then to be acquired, but in no event later than September 15, 2001, subject to Paragraph 7(b) of this Contract.
2	Lots 14 - 31, Block D	Thirty (30) days after the Development Work is substantially completed for the Lots then to be acquired, but in no event later than October 15, 2001, subject to Paragraph 7(b) of this Contract.
3	Lots 9 - 17, Block O	Thirty (30) days after the Development Work is substantially completed for the Lots then to be acquired, but in no event later than December 15, 2001, subject to Paragraph 7(b) of this Contract.

Exhibit "F"

(Grading Plan)

Exhibit "G"

(Schedule of Development Responsibilities)

ITEM OF RESPONSIBILITY	PURCHASER	SELLER
Site Plan		X
Record Plat		X
Subdivision Bonds		X
Plan Approval Fees		X
Pro-Rate Share Fees (except those paid by Home Buyers)		X
Maintenance Bonds		X
Bonds and Inspection Fees (except house)		X
Grade Estab. & Building Pad Grading (ROW)		X
Erosion Control Initial Install. (except houses)		X
Flood Plain		X
Storm Water Management		X
Prep Water/Sewer Plans		X
Prep Drainage and Paving Plans		X
Road Plans and Profiles		X
Utility Controls		X
Clearing Stakeout		X
Excavation Stakeout		X
House Stakeout	X	
Utility Stakeout—On-Lot		X
Storm Drainage Stakeout		X
Curb and Gutter Stakeout		X
Lot Stakeout-Controls		X
Computations-House Stakeout	X	
Wall Checks	X	
Final Lot Survey	X	
Landscaping—On-Lot	X	
Landscaping—Common Area		X
Recreational Facilities		X
Traverse Controls & Bench Marks		X

ITEM OF RESPONSIBILITY	PURCHASER	SELLER
Street Signs		X
Curb and Gutter		X
Sidewalk—On-Lot	X	
Driveway Aprons	X	
Entry Monumentation		X
Backfill Sediment Basins (Bonded by Seller)		X
ROW Access		X
Stockpile Topsoil (Excluding Lots)		X
Erosion Control and Storm Water Management		
(a) Off-Site (Public Streets and ROW)		X
(b) Lots On-Site	X	
(c) Adjacent Open Space Within Lot Area	X	
Repairs		
(a) Roads		X
(b) Curb and Gutter		X
(c) Damage Caused by Builder	X	
Pathways		X
Public Street Lights		X
Common Area Lighting (if required by County)		X
Off-Lot Improvements		X
Entrance Features (Community)		X
Retaining Walls (Off-Lot)		X
Erosion Control Maint. (On-Lot Post Settlement)	X	
Monuments		X
Compaction & Certification Bldg. Pads		X
Compaction & Certification (ROW)		X
Base Paving		X
Final Paving		X
Sodded Ditches (Bonded by Seller)		X
Sewer (Main)		X
Water (Laterals to Meter Crock)		X
Storm Sewer & Paved Ditch as Bonded by Seller		X
Utility Sewer Lateral to Property Line		X
Utility Sewer Lateral from Property Line	X	

ITEM OF RESPONSIBILITY	PURCHASER	SELLER
Mass Excavation Including Balanced Lots *		X
Building Pad Grading		X
Finish and Fine Grading Lots	X	
Underground Telephone to Transformer	X	
Process and Coordinate Underground Utilities	X	
Building and Plumbing Permit Fees	X	
Sewer and Water Tap Fees	X	
Development Impact Taxes (if any)	X	
Off-Site Contribution (if any)		X

* Purchaser will provide Seller with grading template for the houses sited on the Lots.

For each item of development work described in the above Schedule of Development Responsibilities, it shall be the sole responsibility of the party with the corresponding check mark to perform and pay for such development work. In the event of any inconsistency between the terms of the Contract and this Exhibit "G", the terms of the Contract shall control.

Exhibit "H"

LOT INSPECTION REPORT

In accordance with the Real Estate Sales Contract dated _____, 20____, between Miller and Smith Land Inc. and Terrabrook Clarksburg, L.L.C., an inspection was held on the _____ day of _____, 20____.

The installed improvements including curbs, gutters, clearing, rough grading, storm sewers, sanitary sewers and laterals, water mains and laterals, and paved streets on or adjacent to the following Lots were found to be free of defects and damages, except as noted below.

[illegible]

APPROVED:

Representative, Miller and Smith Land Inc.

Representative, Terrabrook Clarksburg, L.L.C.

Exhibit "I"

LOT COMPLETION REPORT

In accordance with the Real Estate Sales Contract dated _____, 20____, between Miller and Smith Land Inc. and Terrabrook Clarksburg, L.L.C., an inspection was held on the _____ day of _____, 20____.

All site work and house construction have been completed on the following Lots and all installed improvements including curbs, gutters, storm sewers, sanitary sewers and laterals, water mains and laterals were found to be free of damages, except as noted below.

[illegible]

APPROVED:

Representative, Miller and Smith Land Inc.

Representative, Terrabrook Clarksburg, L.L.C.

Exhibit "J-1"

(Water and Sewer Declaration)

EXHIBIT A to Notice of Deferred Water and Sewer Charges

(Attach a copy of the Applicable Recorded Water and Sewer Declaration)

Exhibit "J-2"

Notice of Deferred Water and Sewer Charges

THIS ADDENDUM was executed simultaneously with and is an integral part of the New Home Sales Contract between Builder and Buyer dated _____, 20____ for the property known as _____ (the "Property") within the Clarksburg Town Center development (the "Development").

This Property is subject to annual assessments (the "Water and Sewer Charges") which are intended to cover or defray costs related to construction and installation of certain water and sewer systems constructed within the Development. The Water and Sewer Charges shall be due and payable to _____ (insert name of private utility company) (the "Company") for a period of thirty (30) years. The annual rates of Water and Sewer Charges are estimated to be: (i) _____ per year for each single-family detached lot; (ii) _____ per year for each townhouse lot, and (iii) _____ per year for each unit in a multi-family building. Buyer shall pay a pro-rata share of the current installment of Water and Sewer Charges adjusted to the date of Buyer's settlement on the Property. Notwithstanding the foregoing, the Company, in its sole and absolute discretion, may allow or may require (i) Buyer to pay its annual Water and Sewer Charges in monthly, quarterly or bi-annual installments as determined by the Company, and (ii) Buyer's mortgagee to escrow and pay to the Company the Water and Sewer Charges. There is a right of prepayment for the Water and Sewer Charges, and the prepayment figure may be ascertained by contacting the Company or by reviewing the Declaration of Water and Sewer Charges recorded against the Property. The Water and Sewer Charges are a lien on Buyer's property as well as a contractual obligation between the Company and each Owner of the subject property and are not a fee or assessment by Montgomery County, Maryland or the Washington Suburban Sanitary Commission.

Buyer acknowledges having received from Builder a recorded copy of the aforesaid Declaration of Water and Sewer Charges attached hereto as Exhibit "A".

Buyer has read and understands the above disclosure.

IN WITNESS WHEREOF, the undersigned have executed and delivered this Addendum as of the date first written above.

BUILDER:

By: _____
Name: _____
Title: _____

BUYER:

By: _____
Name: _____

By: _____
Name: _____

Exhibit "K"

Notice of Special Taxing District

THIS ADDENDUM was executed simultaneously with and is an integral part of the New Home Sales Contract/Lot Sales Contract between Builder and Buyer dated _____, 20____ for the property known as _____ (the "Property") within the Clarksburg Town Center development (the "Development").

The Development is proposed to be located within the Clarksburg Town Center Development District (the "Tax District"), a special taxing district which may be created by Montgomery County. Once the Development becomes subject to the Tax District taxing scheme, each owner of a lot in the Development will be liable to pay annually any special assessment and/or special tax imposed under Chapter 14 of the Montgomery County Code (the "Tax District Assessment"). As of the date of these disclosures, the rates or amounts of the Tax District Assessment have not yet been set by the County, but will be set at a fixed ad valorem rate each year, resulting in an average estimated Tax District Assessment for the initial year of the Tax District of between (i) _____ per year for each single family detached lot, (ii) _____ per year for each single family attached lot, and (iii) _____ per year for each unit in a multi-family building; however, such amounts are estimates only and are subject to change. Homes valued at more or less than the average value in the Development will bear, respectively, a relatively higher or lower Tax District Assessment. The County Council may increase the rate of any special tax or assessment on a yearly basis. Special taxes and assessments will be used to pay the principal of, interest on and any redemption premium on any bonds which are to be issued by the County for the Tax District and to replenish the debt service reserve fund for such bonds. The Tax District Assessment would commence in the amount specified above with respect to each lot on a specified date after the date the bonds are sold by the County for the Tax District (the "Commencement Date"). In the event that settlement on the initial sale of a home occurs after the Commencement Date, the Tax District Assessment for such home shall commence on the date of such settlement. The Tax District Assessment would terminate (except as to any unpaid Tax District Assessments, interest, costs, late fees, and/or attorneys' fees) on the date that the bonds issued in respect of the Tax District have been paid in full. For further information on the Tax District Assessment, a home buyer may contact the Montgomery County Department of Finance at (240) 777-8950.

Buyer has read and understands the above disclosure.

IN WITNESS WHEREOF, the undersigned have executed and delivered this Addendum as of the date first written above.

BUILDER:

By: _____
Name: _____
Title: _____

BUYER:

By: _____
Name: _____

By: _____
Name: _____

Exhibit "N"

Special Protection Area Disclosure

THIS ADDENDUM was executed simultaneously with and is an integral part of the New Home Sales Contract/Lot Sales Contract between Builder and Buyer dated _____, 20____ for the property known as _____ (the "Property") within the Clarksburg Town Center development (the "Development").

Buyer acknowledges that, prior to executing the sales contract for the Property, Buyer was advised by Seller, in accordance with Section 40-12 of the Montgomery County Code, that all or a portion of the Property is designated as a "Special Protection Area" pursuant to Section 19-62 of the Montgomery County Code. A "Special Protection Area" is a geographic area where (a) existing water resources, or other environmental features directly relating to those water resources, are of high quality or unusually sensitive, and (b) proposed land uses would threaten the quality or preservation of those resources or features in the absence of special water quality protection measures which are closely coordinated with appropriate land use controls.

The Montgomery County Council may designate a geographic area as a Special Protection Area by identifying the area in (i) a land use plan, (ii) the Comprehensive Water Supply and Sewer System Plan, (iii) a watershed plan, or (iv) by a duly adopted resolution.

BUYER UNDERSTANDS THAT SPECIAL WATER QUALITY MEASURES AND CERTAIN RESTRICTIONS ON LAND USES AND IMPERVIOUS SURFACES MAY APPLY TO THE PROPERTY.

For further information, Buyer should contact the Maryland-National Capital Park and Planning Commission, 8787 Georgia Avenue, Silver Spring, Maryland 20910, Phone: 301-495-4594.

Buyer has read and understands the above disclosure.

IN WITNESS WHEREOF, the undersigned have executed and delivered this Addendum as of the date first written above.

BUILDER:

By: _____
Name: _____
Title: _____

BUYER:

By: _____
Name: _____

By: _____
Name: _____

Exhibit "L"

(Description of Design Guidelines)

The Design Guidelines for the Clarksburg Project prepared by SKG Architects, dated January 17, 2001, as amended through the date of this Contract, are incorporated herein by this reference.

Exhibit "M"

MONTGOMERY COUNTY STANDARD DISCLOSURES

1. Availability of Water and Sewer Service.

(a) Pursuant to the Montgomery County Code, notice is hereby given to Purchaser of the obligation of Seller, or its duly authorized agent, to disclose to Purchaser any information known to Seller regarding:

(i) whether the Property is connected to, or has been approved for connection to, a public water and sewer system and if not, the source, if any, of potable water for the Property and whether an individual sewage disposal system has been constructed on the Property or approved or disapproved by the County for construction on the Property.

(ii) the water and sewer service area category or categories that currently apply to the Property and a brief explanation of how each category affects the availability of water and sewer service, any recommendations in the applicable master plan regarding water and sewer service to the Property, and the status of any pending water and sewer comprehensive plan amendments or service area category changes that would apply to the Property.

(b) Purchaser acknowledges that, prior to Purchaser's entering into this Contract, Seller, or its agent, provided the foregoing information to Purchaser. Purchaser understands that to stay informed of future changes in County and municipal water and sewer plans, Purchaser should consult the County Planning Board, the Washington Suburban Sanitary Commission, the County Department of Environmental Protection, or any appropriate municipal or water and sewer body.

(c) If an individual sewage disposal system has been or will be installed upon the Property, and if the Property is located within a subdivision, Purchaser indicates that it has reviewed a copy of the subdivision plat, including any restrictions on the location of initial and reserve wells, individual sewage disposal systems, and the buildings to be served by any individual sewage disposal system.

2. Subdivision Plat

Purchaser waives receipt from Seller, or its agent, of an entire copy of the recorded plat of subdivision relating to the Property, acknowledging that no such plat now exists.

3. Airport or Heliport

Purchaser acknowledges that, prior to its entering into this Contract, Seller has advised Purchaser of the relative location of any airport or heliport, as defined in the Montgomery County Zoning Ordinance, existing within a five (5)-mile radius of the Property.

PURCHASER'S INITIALS: _____

4. Master Plans

Purchaser has the right pursuant to Section 40-10 of the Montgomery County Code to review, before signing a contract for the sale of real property, the applicable county master plan, and any municipal land use plan for the area in which the Property is located, and any adopted amendment to either plan, and approved official maps showing planned land uses, roads and highways, parks and other public facilities affecting the property contained in the plan.

Purchaser acknowledges that (A) Seller has offered Purchaser the opportunity to review the applicable master plan and municipal land use plan and any adopted amendment to either plan, (B) Seller has informed Purchaser that amendments affecting the plans may be pending before the Planning Board or the County Council or a municipal planning body, (C) Purchaser has either reviewed each plan and adopted amendment or has waived the right to do so, and (D) Purchaser understands that, to stay informed of future changes in County and municipal land use plans, Purchaser should consult the Planning Board and the appropriate municipal planning body.

Purchaser acknowledges that at no time did Seller or any agent of Seller explain to him the intent or meaning of any such plan, amendment, or map, nor did Purchaser rely on any representation made by Seller or any agent of Seller relative to such plan, amendment, or map.

5. Special Protection Area

Purchaser acknowledges that prior to executing this Contract Purchaser was advised by Seller, in accordance with Section 40-12 of the Montgomery County Code, that all or a portion of the Property is designated as a "Special Protection Area" pursuant to Section 19-62 of the Montgomery County Code. A "Special Protection Area" is a geographic area where (a) existing water resources, or other environmental features directly relating to those water resources, are of high quality or unusually sensitive, and (b) proposed land uses would threaten the quality or preservation of those resources or features in the absence of special water quality protection measures which are closely coordinated with appropriate land use controls.

The Montgomery County Council may designate a geographic area as a Special Protection Area by identifying the area in (i) a land use plan, (ii) the Comprehensive Water Supply and Sewer System Plan, (iii) a watershed plan, or (iv) by a duly adopted resolution.

Purchaser understands that special water quality measures and certain restrictions on land uses and impervious surfaces may apply to the Property.

PURCHASER'S INITIALS: _____

Exhibit "O"

**List of Property Materials
(on-site in Clarksburg Project field office)**

Preliminary Plan

Site Plan

Approval Letter for Site Plan

Design Guidelines

Phase I Environmental Site Assessment dated November 30, 1999

Proposed Paving and Storm Drain Plans

Proposed Sediment Control Plans for Utilities

Proposed Rough Grading and Sediment Control Plan

Proposed Record Plat

Exhibit "P"

FIRST REFUSAL AND REPURCHASE AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 20____, by and between TERRABROOK CLARKSBURG, L.L.C., a Delaware limited liability company ("Terrabrook"), and MILLER AND SMITH LAND INC., a Virginia corporation ("Purchaser").

RECITALS:

A. Purchaser is the fee simple owner of the residential building lot or lots located in Montgomery County, Maryland, which are described on Exhibit "A" attached to and made a part of this Agreement (collectively, the "Lots" and individually, a "Lot"). Purchaser acquired the Lots from Terrabrook immediately prior to the execution of this Agreement.

B. The Lots are part of a planned unit development known as "Clarksburg Town Center". Terrabrook is the developer of Clarksburg Town Center and, as such, has a significant economic interest in knowing who will construct houses upon the Lots and when such construction will take place.

C. Accordingly, Purchaser has agreed to grant to Terrabrook a right of first refusal and a repurchase option with respect to the Lots, subject to the provisions of this Agreement. Purchaser acknowledges that its agreement to provide such right and option constituted a material term of sale between Terrabrook and Purchaser in the sale of the Lots to Purchaser and that Terrabrook would not have sold the Lots to Purchaser without having obtained such right and option.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) paid in hand by Terrabrook to Purchaser and for other good and valuable consideration, the receipt and sufficiency of which each of the parties acknowledges, Terrabrook and Purchaser agree as follows:

1. If Purchaser desires to sell any Lot, Terrabrook shall have a right of first refusal with respect to such Lot in accordance with this Agreement (the "**First Refusal Right**"). If Purchaser receives and is willing to accept any bona fide written offer for any Lot (an "**Offer**"), Purchaser shall furnish a true and complete copy of the Offer to Terrabrook. The Offer furnished to Terrabrook shall include, without limitation: (a) the name and address of the offeror; (b) a description of the Lot covered by the Offer; (c) the purchase price offered; (d) the terms of payment, including the terms of any seller financing; (e) the settlement date; and (f) all other material terms of sale.

2. For a period of thirty (30) days from its receipt of the Offer (the "**Exercise Period**"), Terrabrook shall have the exclusive right and option to elect to repurchase the Lot that is the subject of the Offer for an amount equal to the sum of the purchase price (including escalator, if any) and any recreational facilities contribution paid by Purchaser to Terrabrook at the time of settlement when Purchaser acquired such Lot from Terrabrook (the "**Repurchase Price**") and otherwise upon the terms and conditions set forth in this Agreement. If Terrabrook does not timely exercise its First Refusal Right, Purchaser shall be free to make the sale of the Lot to the bona fide offeror, provided, however, that the sale must be made substantially in accordance with the terms and conditions set forth in the Offer as furnished to Terrabrook. If the sale to the bona fide offeror is not so consummated, Terrabrook shall again have a First Refusal Right with regard to any new or revised terms that Purchaser is willing to accept for the Lot(s) covered by the Offer. Whether or not Terrabrook exercises the First Refusal Right with regard to any Offer received for a specific Lot, Terrabrook's First Refusal Right shall remain in full force and effect with respect to any Offer which Purchaser is willing to accept for any other Lot.

3. For the purposes of this Agreement, a sale, transfer, or assignment of a majority of the beneficial interests in Purchaser shall also be deemed to be a sale as to which the First Refusal Right shall be applicable. However, the First Refusal Right shall not apply to a

foreclosure, deed in lieu of foreclosure, or a sale in the ordinary course of Purchaser's business (i.e., the sale of a Lot to a home buyer where Purchaser agrees to construct a home upon such Lot).

4. The First Refusal Right shall be in effect as to each Lot from the date of this Agreement until such time as a building permit has been issued for the construction of a house upon that Lot and the foundation of that house has been installed (the "**Commencement of Construction**"). Upon Commencement of Construction upon a Lot, the First Refusal Right as to that Lot shall automatically expire and be of no further force or effect without the requirement that any further instruments be executed or recorded, provided that (a) the First Refusal Right shall remain in effect as to all other Lots upon which there has been no Commencement of Construction, and (b) Commencement of Construction shall not terminate the First Refusal Right as to any Lot sold or transferred prior to the Commencement of Construction in violation of this Agreement. Despite the foregoing, if not sooner terminated because of Commencement of Construction, the First Refusal Right as to all of the Lots shall expire on the date which is seven (7) years after the date of this Agreement.

5. In the event that Commencement of Construction has not occurred on any Lot within two (2) years after the date of this Agreement (the "**Outside Commencement Date**"), Terrabrook shall have the option to repurchase the Lot from Purchaser upon the terms and conditions set forth in this Agreement (the "**Repurchase Option**"). If Terrabrook desires to exercise the Repurchase Option as to a particular Lot, it shall give written notice to Purchaser within one hundred twenty (120) days after the Outside Commencement Date. If Terrabrook does not give such notice within the one hundred twenty (120) day period, Terrabrook shall be deemed to have waived the Repurchase Option. If Commencement of Construction has occurred on a Lot on or before the Outside Commencement Date, the Repurchase Option as to that Lot shall automatically expire and be of no further force or effect without the requirement that any further instruments be executed or recorded. The Outside Commencement Date shall be extended for a period of time equal to any period of prevention, delay or stoppage of construction experienced by Purchaser due to strikes, civil riots, war, invasion, fire or other casualty, Acts of God, unavailability of labor or materials, default by Terrabrook, unusually severe weather conditions not reasonably anticipated, act or failure to act of governmental authorities, or other causes beyond the reasonable control of Purchaser. Financial inability and unfavorable market conditions shall not be deemed to be such causes.

6. In the case of Terrabrook's exercise of the First Refusal Right or the Repurchase Option, Terrabrook shall pay to Purchaser the Repurchase Price for each Lot being repurchased. The Repurchase Price shall be paid in cash at the time of settlement. Within seven (7) days after Terrabrook gives notice to Purchaser that it is exercising the First Refusal Right or the Repurchase Option, as the case may be (each an "**Exercise Notice**"), Terrabrook shall deliver to a title insurance company or title attorney selected by Terrabrook (the "**Escrow Agent**") a good faith deposit of [REDACTED] Dollars (\$[REDACTED]) per Lot being repurchased (the "**Option Deposit**") which shall be applied at settlement to the price for such Lot. Settlement shall be held within sixty (60) days after the giving of the Exercise Notice at the offices of the Escrow Agent within the Washington, D.C. metropolitan area or at such other place as may be mutually agreed upon by Terrabrook and Purchaser. Purchaser shall convey title to Terrabrook at the time of settlement by the usual form of special warranty deed. Title to the Lot(s) being repurchased shall be free of all liens and encumbrances, except for the title exceptions which affected the Lot(s) at the time of their acquisition by Purchaser. All costs of settlement, including, without limitation, transfer and recordation taxes, shall be paid for equally by Terrabrook and Purchaser. All real estate taxes and other governmental assessments payable in annual installments, and annual water and sewer front foot benefit charges shall be adjusted to the date of settlement on the repurchase. At settlement, Purchaser shall re-assign to Terrabrook any unused SDC credits for the Lots being repurchased which Terrabrook previously assigned to Purchaser and Terrabrook shall reimburse to Purchaser the amount paid by Purchaser for such credits. Also at settlement, Purchaser shall deliver and assign to Terrabrook copies of all soils reports, environmental studies, plans, site engineering materials, title materials, surveys, marketing materials and other studies, reports, materials, and information relating to the lots being repurchased which were generated by or for Purchaser or its agents, excluding, however, architectural materials ("**Purchaser's Materials**"). All of Purchaser's Materials shall be fully paid for by Purchaser. Purchaser makes no representation or

warranty about the accuracy, reliability, or completeness of Purchaser's Materials. At any time after Terrabrook is entitled to Purchaser's Materials, Purchaser, upon request, shall assign to Terrabrook all of Purchaser's rights in and to Purchaser's Materials, to the extent assignable. Terrabrook shall have a right of entry upon the Lots being repurchased at all times after giving the Exercise Notice.

7. If Terrabrook gives an Exercise Notice but fails to settle on the Lots concerned when required to do so under this Agreement, the Option Deposit shall be paid to Purchaser as liquidated damages and Purchaser's sole remedy and Terrabrook shall have no further liability at law or in equity for such failure and Terrabrook's repurchase rights with respect to such Lots shall be of no further force or effect.

8. The terms of this Agreement shall be fully subordinate and subject to any and all bona fide mortgages and deeds of trust which encumber all or any part of the Lots, and Terrabrook agrees to execute any documents reasonably required by Purchaser's lender to evidence such subordination.

9. The First Refusal Right and Repurchase Option are independent of one another and Terrabrook's failure to exercise one shall not impair its exercise of the other.

10. The covenants, agreements, rights, benefits, obligations and liabilities created in this Agreement shall be deemed to be covenants running with and binding upon the land. This Agreement shall bind and inure to the benefit of Terrabrook, Purchaser, and their respective successors and assigns.

11. All notices and other communications under this Agreement shall be in writing and shall be deemed duly given if (i) personally delivered, with signed and dated receipt, (ii) sent by reputable commercial overnight delivery service, with signed and dated receipt, (iii) mailed by certified mail, return receipt requested, first class, postage prepaid; or (iv) sent by telefax with evidence of transmission and receipt [provided that a copy is also sent by one of the means listed as items (i) through (iii)], as follows:

Terrabrook: c/o TERRABROOK®
42935 Waxpool Road
Ashburn, Virginia 20148
Attn: Tracy Graves
Fax: 703-858-7380

With copies to: TERRABROOK®
3030 LBJ Freeway, LB-6
Suite 1500
Dallas, Texas 75234
Attn: Cynthia A. Stephens, Esq.
Fax: 972-443-6192

and

John R. Orrick, Jr., Esq.
Linowes and Blocher LLP
1010 Wayne Avenue, 10th Floor
Silver Spring, Maryland 20910
Fax: 301-495-9044

Purchaser: Miller and Smith Land Inc.
1568 Spring Hill Road, Ste. 400
McLean, Virginia 22102
Attn: Michael Capretti
Fax: 703-821-2040

With copies to: Charles F. Stuart, Jr., Esq.
Vice President & General Counsel
The Miller & Smith Cos.
1568 Spring Hill Road, Ste. 400
McLean, Virginia 22102
Fax: 703-821-2040

Each party shall be responsible for notifying the other party of any change of address.

12. The provisions of this Agreement are not intended to create, nor shall they in any way be interpreted to create, a joint venture, partnership, or other similar relationship between the parties.

13. The Recitals set forth in this Agreement and all Exhibits attached to this Agreement are incorporated in and made a part of this Agreement.

14. No delay or omission by Terrabrook in exercising any right or power accruing upon Purchaser's non-compliance with or failure to perform any of the provisions of this Agreement shall impair or be construed to be a waiver of any such right or power. A waiver by Terrabrook of any of the obligations of Purchaser under this Agreement shall not be construed to be a waiver of any subsequent breach of that obligation or a waiver of any other term, covenant or condition of this Agreement.

15. Nothing contained in this Agreement shall be deemed to modify the terms of any other written agreement between Purchaser and Terrabrook regarding the First Refusal Right and the Repurchase Option.

16. All questions with respect to the construction of this Agreement shall be determined in accordance with the laws of the State of Maryland, excluding choice of laws principles.

17. Amendments to this Agreement shall be in writing, signed by both parties.

18. Each provision of this Agreement is intended to be severable. If any term or provision of this Agreement shall be determined to be illegal or invalid for any reason whatsoever, such provision shall be severed from this Agreement and shall not affect the validity of the remainder of this Agreement.

19. This Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have signed, sealed and delivered these presents as their own free act and deed as of the day and year first written above.

WITNESS:

TERRABROOK:

TERRABROOK CLARKSBURG, L.L.C.,
a Delaware limited liability company

By: Westerra Management, L.L.C., a Delaware limited
liability company, its authorized representative

By: _____ [SEAL]

Name: _____

Title: _____

WITNESS/ATTEST:

PURCHASER:

MILLER AND SMITH LAND INC.
a Virginia corporation

By: _____ [SEAL]

Name: _____

Title: _____

ATTORNEY CERTIFICATION

I HEREBY CERTIFY THAT I am an attorney duly licensed to practice before the Court of Appeals of Maryland, and that this instrument was prepared by me or under my supervision.

STATE/COMMONWEALTH OF

*

*

*

to wit:

CITY/COUNTY OF

I HEREBY CERTIFY that on this ____ day of _____, 20____, before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared _____, known to me (or satisfactorily proven) to be the _____ of Westerra Management, L.L.C., the authorized representative of Terrabrook Clarksburg, L.L.C., and that such person, being authorized to do so, executed the foregoing and annexed instrument for the purposes therein contained by signing the name of the said company.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires on the ____ day of _____, _____.

[NOTARIAL SEAL]

* * *

STATE/COMMONWEALTH OF

*

*

*

to wit:

CITY/COUNTY OF

I HEREBY CERTIFY that on this ____ day of _____, 20____, before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared _____, known to me (or satisfactorily proven) to be the _____ of Miller and Smith Land Inc. and, being authorized to do so, executed the foregoing and annexed instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires on the ____ day of _____, _____.

[NOTARIAL SEAL]

* * *

EXHIBIT A

DESCRIPTION OF THE LOTS

Exhibit "Q"

(Payment Covenant)

HOME SALE PROFIT PARTICIPATION AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 20____, by and between TERRABROOK CLARKSBURG, L.L.C., a Delaware limited liability company ("Terrabrook"), and MILLER AND SMITH LAND INC., a Virginia corporation ("Purchaser").

RECITALS:

A. Purchaser is the fee simple owner of the residential building lot or lots located in Montgomery County, Maryland, which are described on Exhibit "A" attached to and made a part of this Agreement (collectively, the "Lots" and individually, a "Lot"). The Lots are part of a planned unit development known as "Clarksburg Town Center". Purchaser acquired the Lots from Terrabrook immediately prior to the execution of this Agreement.

B. In connection with its purchase of the Lots, Purchaser has agreed to pay Terrabrook certain additional amounts, if any, which may be realized upon the sale of houses constructed on the Lots.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and for other good and valuable consideration, the receipt and sufficiency of which each of the parties acknowledges, Terrabrook and Purchaser agree as follows:

1. As set forth in this Agreement, Purchaser agrees to pay to Terrabrook a "Lot Premium" (hereinafter defined) for each Lot which is sold by Purchaser to a third party home buyer (a "Home Buyer") at prices above the minimum sales prices set forth below. As used herein, the term "Lot" shall include the house and all other improvements constructed or to be constructed thereon. The "Lot Premium" shall be an amount equal to _____ of the amount by which the "Net Proceeds" (defined below) received by Purchaser from a Home Buyer for a Lot exceed _____ Dollars (_____).

2. "Net Proceeds" means, with respect to each Lot, (i) the gross sales price for the Lot paid by a Home Buyer to Purchaser, including, without limitation, all extra features, customized features, change orders, additions and/or non-standard items constructed or installed in the house and further including any down payment, the principal amount of any deferred purchase money indebtedness, and all other payments and the monetary value of any other consideration paid, payable, or to be paid by the Home Buyer to Purchaser, minus (ii) any bona fide, out-of-pocket closing costs paid by Purchaser in connection with the sale of the Lot to the Home Buyer (i.e., any brokerage commissions, transfer and recordation taxes, title insurance premiums, attorneys fees, settlement fees, real estate tax prorations or prepaid items) and any bona fide cash contribution from Purchaser to the Home Buyer (i.e., closing cost credit, decorating allowance, etc.) as such costs and contributions are shown on the settlement statement between Purchaser and the Home Buyer. An example of a Lot Premium calculation, for purposes of illustration only, is as follows:

Gross sales price

Purchaser's bona fide settlement costs as reflected on the settlement statement between Purchaser and the Home Buyer

Net Proceeds

Less minimum Net Proceeds amount

Total Net Proceeds applicable for Lot Premium

[REDACTED]

Total Lot Premium

[REDACTED]

3. At the time of closing on each Lot from Purchaser to a Home Buyer, Purchaser shall provide Terrabrook with a copy of the settlement statement and the Lot Premium for such Lot, if any, shall be paid by Purchaser to Terrabrook. At the time of payment of any Lot Premium, Purchaser shall furnish Terrabrook with written certification that the amount of the Lot Premium paid is accurate and complete.

4. Within thirty (30) days after entering into any sales contract for a Lot with a Home Buyer, Purchaser shall furnish Terrabrook with the material terms of sale including, without limitation, the name of the Home Buyer, purchase price, the anticipated dates of closing on the Lot, and the name and address of the title company or title attorney that will conduct settlement on such Lot. Terrabrook shall have the right, upon at least three (3) business days' prior notice, to inspect Purchaser's books and records with regard to the sales of Lots, including, without limitation, the settlement sheets from all Lot closings. In the event any Lot Premium or portion thereof is not paid to Terrabrook when due under this Agreement, the outstanding amount shall bear interest from its due date until paid at the "Prime Rate" plus three percent (3%). The term "**Prime Rate**" means the prime rate of interest for large money center banks as published in the Money Rates section of the Wall Street Journal as of the date closest to (but before) the due date of such sum. If the Wall Street Journal ceases to publish such rate, the Prime Rate shall be determined by reference to such other business newspaper or periodical that regularly publishes such rate as may be selected by Terrabrook.

5. The terms of this Agreement shall be fully subordinate and subject to any and all bona fide mortgages and deeds of trust which encumber all or any part of the Lot which are granted by Purchaser to secure acquisition, development, and/or construction financing with respect to the Lot, together with any and all modifications, renewals, and consolidations of the same. Terrabrook agrees to execute any documents reasonably required by Purchaser's lender to evidence such subordination.

6. At each closing on the sale of a Lot from Purchaser to a Home Buyer, Terrabrook shall execute and deliver a release of this Agreement as to the Lot then being conveyed, provided that any Lot Premium due upon such closing is paid to Terrabrook.

7. The covenants, agreements, rights, benefits, obligations and liabilities created in this Agreement shall be deemed to be covenants running with and binding upon the land. This Agreement shall bind and inure to the benefit of Terrabrook, Purchaser, and their respective successors and assigns.

8. All notices and other communications under this Agreement shall be in writing and shall be deemed duly given if (i) personally delivered, with signed and dated receipt, (ii) sent by reputable commercial overnight delivery service, with signed and dated receipt, (iii) mailed by certified mail, return receipt requested, first class, postage prepaid; or (iv) sent by telefax with evidence of transmission and receipt [provided that a copy is also sent by one of the means listed as items (i) through (iii)], as follows:

Terrabrook: c/o TERRABROOK®
42935 Waxpool Road
Ashburn, Virginia 20148
Attn: Tracy Graves
Fax: 703-858-7380

With copies to: TERRABROOK®
3030 LBJ Freeway, LB-6
Suite 1500
Dallas, Texas 75234
Attn: Cynthia A. Stephens, Esq.
Fax: 972-443-6192

and

John R. Orrick, Jr., Esq.
Linowes and Blocher LLP
1010 Wayne Avenue, 10th Floor
Silver Spring, Maryland 20910
Fax: 301-495-9044

Purchaser: Miller and Smith Land Inc.
1568 Spring Hill Road, Ste. 400
McLean, Virginia 22102
Attn: Michael Capretti
Fax: 703-821-2040

With copies to: Charles F. Stuart, Jr., Esq.
Vice President & General Counsel
The Miller & Smith Cos.
1568 Spring Hill Road, Ste. 400
McLean, Virginia 22102
Fax: 703-821-2040

Each party shall be responsible for notifying the other party of any change of address.

9. The provisions of this Agreement are not intended to create, nor shall they in any way be interpreted to create, a joint venture, partnership, or other similar relationship between the parties.

10. The Recitals set forth in this Agreement and all Exhibits attached to this Agreement are incorporated in and made a part of this Agreement.

11. No delay or omission by Terrabrook in exercising any right or power accruing upon Purchaser's non-compliance with or failure to perform any of the provisions of this Agreement shall impair or be construed to be a waiver of any such right or power. A waiver by Terrabrook of any of the obligations of Purchaser under this Agreement shall not be construed to be a waiver of any subsequent breach of that obligation or a waiver of any other term, covenant or condition of this Agreement.

12. Nothing contained in this Agreement shall be deemed to modify the terms of any other written agreement between Purchaser and Terrabrook regarding the Lot Premium.

13. All questions with respect to the construction of this Agreement shall be determined in accordance with the laws of the State of Maryland, excluding choice of laws principles.

14. Amendments to this Agreement shall be in writing, signed by both parties.

15. Each provision of this Agreement is intended to be severable. If any term or provision of this Agreement shall be determined to be illegal or invalid for any reason whatsoever, such provision shall be severed from this Agreement and shall not affect the validity of the remainder of this Agreement.

16. This Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have signed, sealed and delivered these presents as their own free act and deed as of the day and year first written above.

WITNESS:

TERRABROOK:

TERRABROOK CLARKSBURG, L.L.C.,

a Delaware limited liability company

By: Westerra Management, L.L.C., a Delaware limited liability company, its authorized representative

By: _____ [SEAL]

Name: _____

Title: _____

WITNESS/ATTEST:

PURCHASER:

MILLER AND SMITH LAND INC.,
a Virginia corporation

By: _____ [SEAL]

Name: _____

Title: _____

ATTORNEY CERTIFICATION

I HEREBY CERTIFY THAT I am an attorney duly licensed to practice before the Court of Appeals of Maryland, and that this instrument was prepared by me or under my supervision.

STATE/COMMONWEALTH OF

*

CITY/COUNTY OF

*

to wit:

*

I HEREBY CERTIFY that on this ____ day of _____, 20____, before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared _____, known to me (or satisfactorily proven) to be the _____ of Westerra Management, L.L.C., the authorized representative of Terrabrook Clarksburg, L.L.C., and that such person, being authorized to do so, executed the foregoing and annexed instrument for the purposes therein contained by signing the name of the said company.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires on the ____ day of _____, _____.

[NOTARIAL SEAL]

* * *

STATE/COMMONWEALTH OF

*

CITY/COUNTY OF

*

to wit:

*

I HEREBY CERTIFY that on this ____ day of _____, 20____, before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared _____, known to me (or satisfactorily proven) to be the _____ of Miller and Smith Land Inc. and, being authorized to do so, executed the foregoing and annexed instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires on the ____ day of _____, _____.

[NOTARIAL SEAL]

* * *

EXHIBIT A

DESCRIPTION OF THE LOTS

Exhibit "R"

**National Association of Home Builders
Build America Beautiful Guidelines**

- 1** Inform all employees and subcontractors about the Build America Beautiful Program and your intent to keep the job site clean and, when possible, reduce and recycle wastes. Explain that employee participation is required and not optional.
- 2** At preconstruction conferences, stress the importance of maintaining a clean job site. Remind subcontractors at progress meetings.
 - Subcontractors are responsible for monitoring their suppliers and employees.
 - Send a written notice promptly to any subcontractor or supplier who fails to clean up.
 - Consider and handle noncompliance the same as any other contract violation.
- 3** Provide containers for employee garbage and enforce the use of the containers.
 - Provide designated areas for lunch and include a covered barrel for trash.
 - Designate a person to inspect the areas daily and pick up any trash.
 - Empty containers regularly, as needed.
- 4** Post and maintain Build America Beautiful decals at job sites to heighten awareness of the program. Trash containers should have Build America Beautiful decals on them.
- 5** Develop and implement a plan to keep dirt from the construction site off the street. Monitor all trucks that leave the site when it is muddy.
- 6** Provide and maintain entrance pads for each project. Make sure all crews and suppliers enter and exit the job site at the entrance provided.
- 7** Provide a common trash area for subcontractors to dispose of trash and debris.
- 8** Instruct cement truck drivers to wash out at a designated area on site.
- 9** Be able to explain the company's Build America Beautiful Program to site visitors.
- 10** Explain the Build America Beautiful objectives to subcontractors and suppliers who deliver or remove materials at the job site.
- 11** Make every effort to minimize the waste of materials and bulk of construction debris. Work with suppliers to reduce excessive packaging.
- 12** Evaluate recycling opportunities for lumber, drywall, cardboard, metal and other materials. If you chose to recycle, clearly designate recycling bins.
- 13** When possible, salvage materials for reuse.
- 14** Dispose of hazardous waste in accordance with federal, state, and local requirements.

Exhibit "S"

USE AND CONSTRUCTION AGREEMENT

(For MPDU Lots)

THIS AGREEMENT, made this _____ day of _____, 20____, by and between **TERRABROOK CLARKSBURG, L.L.C.**, a Delaware limited liability company ("Terrabrook"), and **MILLER AND SMITH LAND INC.**, a Virginia corporation ("Purchaser").

RECITALS:

A. Purchaser is the fee simple owner of the residential building lot or lots located in Montgomery County, Maryland ("**County**") which are described on Exhibit "A" attached to and made a part of this Agreement (individually, an "**MPDU Lot**" and collectively, the "**MPDU Lots**"). The MPDU Lots are part of a comprehensive planned unit development known as Clarksburg Town Center. Purchaser acquired the MPDU Lots from Terrabrook immediately prior to the execution of this Agreement.

B. Purchaser plans to construct and sell residential dwelling units on the MPDU Lots (collectively, "**Units**" and individually, a "**Unit**"). The Units to be constructed on the MPDU Lots by Purchaser are to be "**MPDUs**". As used in this Agreement, "**MPDUs**" means Units which must be sold or leased at prices or rental rates no greater than those established by the County for moderately priced housing, as set forth in Chapter 25A of the Montgomery County Code.

C. Purchaser has or will acquire from Terrabrook certain other lots within Clarksburg Town Center on which Purchaser intends to construct residential dwelling units to be sold to home buyers at market rate prices (the "**Market Rate Lots**").

D. The parties desire to set forth certain covenants, conditions, and restrictions with respect to the MPDU Lots. Terrabrook would not have sold and conveyed the MPDU Lots to Purchaser if Purchaser had not agreed to subject the MPDU Lots to these covenants, conditions, and restrictions.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) paid in hand by Terrabrook to Purchaser and for other good and valuable consideration, the receipt and sufficiency of which Purchaser acknowledges, Terrabrook and Purchaser agree as follows:

I. Purchaser covenants to Terrabrook as follows:

(a) The MPDU Lots shall be developed and used for residential purposes and uses ancillary to those purposes and for no other use.

(b) Purchaser shall commence construction of Units on the MPDU Lots within forty-five (45) days after the date of this Agreement. Upon commencing construction of Units on the MPDU Lots, Purchaser shall diligently and continuously prosecute the construction to completion;

(c) The development of the MPDU Lots, and the construction of all improvements upon the MPDU Lots, shall be in accordance with the Detailed Application for the MPDU Lots approved by the County including, without limitation, the landscaping plans made a part of the Detailed Application;

(e) Each MPDU Lot shall contain a total of _____ (____) Units, all of which shall be MPDUs;

(f) The exterior building materials used in the construction of the MPDUs shall be substantially equal in quality to the exterior building materials used by Purchaser in the construction of dwelling units on the Market Rate Lots. Purchaser shall comply with all applicable County requirements in regard to the construction, offering, and sales of the MPDUs on the

MPDU Lots and shall enter into and execute such agreements and other instruments as the County may require to set forth Purchaser's obligations with respect to the MPDUs; and

(g) In the event of breach of any of the covenants under this Agreement, Terrabrook may exercise any rights or remedies which may be available at law or in equity in regard to the breach, including, without limitation, bringing a suit for specific performance or other injunctive relief. Further, in the event of any breach by Purchaser of its covenants set forth in this Agreement, and Purchaser's failure to commence diligent and good faith efforts to cure the breach within fifteen (15) days after written notice by Terrabrook is sent to Purchaser specifying the breach (or Purchaser's discontinuance of those efforts after commencing the same), Terrabrook shall be entitled to enter upon and take possession of the MPDU Lots. Thereafter Terrabrook shall have the right to perform any acts with respect to the MPDU Lots that Terrabrook may deem advisable, in its sole and absolute discretion, to satisfy the MPDU requirements of the County or this Agreement, including, without limitation, completing the MPDUs on the MPDU Lots at Purchaser's expense and/or selling or leasing the same in accordance with the County's MPDU program. Purchaser constitutes and appoints Terrabrook as its true and lawful attorney-in-fact with full power of substitution to complete the work in the name of Purchaser and additionally empowers Terrabrook as follows: (i) to make such additions and changes in the plans for the MPDUs as may be necessary or desirable in the judgment of Terrabrook to complete the construction of the MPDUs; (ii) to employ such contractors, subcontractors, agents, architects and inspectors as may be required for this purpose; (iii) to pay, settle or compromise all existing bills and claims which are or may be liens against the MPDU or as may be necessary or desirable for the completion of the work; (iv) to execute all applications and certificates that may be required in the name of Purchaser; and (v) to do any and every other act with respect to the construction and/or sale or lease of the MPDUs that Purchaser may do in its own behalf. This power of attorney shall be deemed to be irrevocable, such power being coupled with an interest. Within ten (10) days after written request by Terrabrook, Purchaser shall execute and deliver to Terrabrook such documents confirming Terrabrook's authority and power of attorney in this regard as Terrabrook may desire. Within thirty (30) days after written demand by Terrabrook (which may be made from time to time), Purchaser shall pay to Terrabrook an amount equal to the costs incurred by Terrabrook in connection with its construction, sales, or leasing of such MPDUs, including reasonable attorneys fees, plus fifteen percent (15%) as an administrative and overhead fee (the "MPDU Costs"), but less the rents, issues, and profits of any sale or lease of MPDUs received by Terrabrook. In addition to any other remedy available to Terrabrook to recover the MPDU Costs, Terrabrook shall have the right (but not the obligation) to collect and retain the rents, issues, and profits of any sale or lease of MPDUs to the extent of the unpaid MPDU Costs. Any proceeds of such sale or lease received by Terrabrook in excess of all unpaid MPDU Costs shall be remitted to Purchaser or its mortgagee with respect to the MPDU Lots.

2 This Agreement shall expire as to each MPDU Lot upon the earlier of (a) twenty (20) years from the date of this Agreement or (b) the substantial completion of the Units to be erected by Purchaser upon the MPDU Lot and the initial sale of all MPDUs contained within the MPDU Lot to bona fide third party purchasers in arm's length transactions. Terrabrook agrees to execute a release in recordable form to evidence the termination of this Agreement.

3. The covenants, agreements, rights, benefits, obligations and liabilities created in this Agreement shall be deemed to be covenants running with and binding upon the land. This Agreement shall bind and inure to the benefit of Terrabrook, Purchaser, and their respective successors and assigns.

4. All notices and other communications under this Agreement shall be in writing and shall be deemed duly given if (i) personally delivered, with signed and dated receipt, (ii) sent by reputable commercial overnight delivery service, with signed and dated receipt, (iii) mailed by certified mail, return receipt requested, first class, postage prepaid; or (iv) sent by telefax with evidence of transmission and receipt [provided that a copy is also sent by one of the means listed as items (i) through (iii)], as follows:

Terrabrook: c/o TERRABROOK®
42935 Waxpool Road
Ashburn, Virginia 20148
Attn: Tracy Graves
Fax: 703-858-7380

With copies to: TERRABROOK®
3030 LBJ Freeway, LB-6
Suite 1500
Dallas, Texas 75234
Attn: Cynthia A. Stephens, Esq.
Fax: 972-443-6192

and

John R. Orrick, Jr., Esq.
Linowes and Blocher LLP
1010 Wayne Avenue, 10th Floor
Silver Spring, Maryland 20910
Fax: 301-495-9044

Purchaser: Miller and Smith Land Inc.
1568 Spring Hill Road, Ste. 400
McLean, Virginia 22102
Attn: Michael Capretti
Fax: 703-821-2040

With copies to: Charles F. Stuart, Jr., Esq.
Vice President & General Counsel
The Miller & Smith Cos.
1568 Spring Hill Road, Ste. 400
McLean, Virginia 22102
Fax: 703-821-2040

Each party shall be responsible for notifying the other party of any change of address.

5. The provisions of this Agreement are not intended to create, nor shall they in any way be interpreted to create, a joint venture, partnership, or other similar relationship between the parties.

6. The Recitals set forth in this Agreement and all Exhibits attached to this Agreement are incorporated in and made a part of this Agreement.

7. No delay or omission by Terrabrook in exercising any right or power accruing upon Purchaser's non-compliance with or failure to perform any of the provisions of this Agreement shall impair or be construed to be a waiver of any such right or power. A waiver by Terrabrook of any of the obligations of Purchaser under this Agreement shall not be construed to be a waiver of any subsequent breach of that obligation or a waiver of any other term, covenant or condition of this Agreement.

8. All questions with respect to the construction of this Agreement shall be determined in accordance with the laws of the State of Maryland, excluding choice of laws principles.

9. Amendments to this Agreement shall be in writing, signed by both parties.

10. Each provision of this Agreement is intended to be severable. If any term or provision of this Agreement shall be determined to be illegal or invalid for any reason whatsoever, such provision shall be severed from this Agreement and shall not affect the validity of the remainder of this Agreement.

11. This Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have signed, sealed and delivered these presents as their own free act and deed as of the day and year first written above.

WITNESS:

TERRABROOK:

TERRABROOK CLARKSBURG, L.L.C.,
a Delaware limited liability company

By: Westerra Management, L.L.C., a Delaware limited liability company, its authorized representative

By: _____ [SEAL]

Name: _____

Title: _____

WITNESS/ATTEST:

PURCHASER:

MILLER AND SMITH LAND INC.,
a Virginia corporation

By: _____ [SEAL]

Name: _____

Title: _____

ATTORNEY CERTIFICATION

I HEREBY CERTIFY THAT I am an attorney duly licensed to practice before the Court of Appeals of Maryland, and that this instrument was prepared by me or under my supervision.

STATE/Commonwealth of

*

*

to wit:

*

City/County of

I HEREBY CERTIFY that on this ____ day of _____, 20____, before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared _____, known to me (or satisfactorily proven) to be the _____ of Westerra Management, L.L.C., the authorized representative of Terrabrook Clarksburg, L.L.C., and that such person, being authorized to do so, executed the foregoing and annexed instrument for the purposes therein contained by signing the name of the said company.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires on the ____ day of _____, _____.

[NOTARIAL SEAL]

* * *

STATE/Commonwealth of

*

*

to wit:

*

City/County of

I HEREBY CERTIFY that on this ____ day of _____, 20____, before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared _____, known to me (or satisfactorily proven) to be the _____ of Miller and Smith Land Inc. and, being authorized to do so, executed the foregoing and annexed instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires on the ____ day of _____, _____.

[NOTARIAL SEAL]

* * *

EXHIBIT A

DESCRIPTION OF THE MPDU LOTS